



absence (UA), totaling 10 days, two specifications of missing ship's movement, disrespect towards a commission officer, wrongful use of marijuana, breaking restriction, and communicating a threat. Additionally, you were issued an administrative remarks (Page 13) formally counseling you concerning your misconduct. You were provided recommendations for corrective action and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 14 October 1988, you sought medical treatment and stated a desire to get off your ship because you were "afraid" that the "hazards onboard ship will cause injury" to your "good left eye." The record shows your condition was pre-service and not a disqualifying condition for shipboard duty. On 18 February 1989, you received a second NJP for assault. On 27 March 1990, you received a third NJP for UA, a period totaling four days and missing ship's movement.

On 28 March 1990, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense, pattern of misconduct, and drug abuse. You elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). On 14 April 1990, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to pattern of misconduct. On 9 May 1990, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 11 December 1990, based on their determination that your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service to a "medical discharge" and contentions that: (1) due to your medical condition, you were not supposed to be accepted onboard your ship and you repeatedly requested to leave but were denied, (2) you were told that you were a "hazard" to the ship with your eye disease affecting your vision, and (3) you were wrong for leaving the ship; however, you felt desperate and made an immature decision. For purposes of clemency and equity consideration, the Board noted you provided documents from your service record but no supporting documentation describing post service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 December 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has submitted no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus

with his misconduct. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. There is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Additionally, based on your administrative separation processing for misconduct that resulted in an OTH characterization, the Board determined that you were ineligible for a "medical discharge" even if there was evidence to support your referral to the Disability Evaluation System. Furthermore, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. Finally, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when

applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

2/26/2024

