

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an OTH discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

In 1994, you filed an application with the Navy Discharge Review Board (NDRB) seeking to have his discharge characterization upgraded. You asserted before the NDRB that your discharge should be upgraded due to extenuating circumstances relating to the shooting death of your friend. On 21 November 1994, the NDRB found that there was no impropriety in your discharge and it denied your requested relief.

In your petition, you have requested that your discharge characterization be upgraded to General (Under Honorable Conditions) and that you be awarded a service connected disability retirement. In support of your request, you contend that in January 1988, you were involved in a hydraulic fluid spill and had to be removed from the space. You state that thereafter you were involved in the shooting of an 18-year-old and you went on a period of unauthorized absence to help the family after the shooting. You provided medical records that you contend support your position. Additionally, the Board noted you checked the "PTSD" and "Other Mental Health" boxes on your application but chose not to provide supporting evidence of your claims.

The Board carefully reviewed your petition and the material that you provided in support of your petition, and disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded that the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. In particular, the Board observed the lack of any evidence that you had any unfitting condition while on active duty. In fact, the proximate reason for your discharge was your request to be discharged in lieu of facing a court-martial. In its review of the entirety of your service record and the material that you provided, the Board determined there was insufficient evidence that you had any unfitting condition, while you were on active duty, that warranted a referral to a medical evaluation board for further review by the Physical Evaluation Board or your placement on the disability retirement list. Finally, the Board determined that you were ineligible for disability processing based on your misconduct based discharge that resulted in an OTH.

Regarding your request for a discharge upgrade, the Board found that there was insufficient evidence to support relief. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and previously discussed contentions. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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 Wilkie Memo and reviewing the record 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 that your request does not merit relief.

The Board also noted that you requested “service connected disability benefits” in your petition. As described above, the Department of the Navy administers the Disability Evaluation System in order to evaluate service members who demonstrate unfitting conditions while they are on active duty. By contrast, the Department of Veterans’ Affairs (VA) administers a program for compensation and pension, as well as other benefits, the eligibility for which is tied to the establishment of service connection and is manifestation-based without a requirement that unfitness for military duty be demonstrated. Should you choose to contact the VA, information may be obtained from their website at www.va.gov. The Board also noted that the State of West Virginia has a Veterans’ agency, the █ Department of Veterans’ Assistance, and its website is veterans.wv.gov. Oftentimes Veterans’ without Internet access may obtain additional information from a local library. Please note that the VA and any state agency are entirely different organizations from this Board and the Department of the Navy, and they make their own eligibility decisions.

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,

11/23/2023

