

for your 3 and 33-day UAs. Prior to submitting this request, you consulted a qualified military lawyer, at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. After the staff judge advocate reviewed your request and recommended approval, your commanding officer was directed to discharge you with an other than honorable (OTH) characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 13 August 1984, you were discharged with an OTH characterization of service.

Your request for an upgrade to your characterization of service was reviewed in consideration of your contention that you suffered from a mental health condition after “being attacked in █ by a known homosexual.” Your request was fully and carefully considered by the Board in light of the Secretary of Defense's 3 September 2014 memorandum, “Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder,” the 25 August 2017 memorandum, “Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment,” and the 25 July 2018 memorandum, “Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations.”

As part of the Board’s review, a qualified mental health provider reviewed your request and provided the Board an advisory opinion (AO) on 20 April 2020. The AO stated your in-service medical records contained evidence of a personality disorder diagnosis but no evidence of any traumatic incidents in the military or any other additional mental health symptoms or conditions. Further, the AO stated the post-service civilian psychological evaluation, completed 11 years after your discharge, did not contain any additional evidence nor did you submit any other evidence in support of your petition for relief. The AO concluded there was insufficient evidence of a mental health condition attributable to your military service that may have mitigated your misconduct. The AO was provided to you on 21 April 2020, and you were given 30 days to submit a response. When you did not provide a response, your case was submitted to the Board for consideration.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you suffered from a mental health condition due to an attack by a known homosexual which negatively affected your performance and mental state. The Board also considered your personality disorder diagnosis which existed prior to entry, your learning disability, your contention you were not provided the “correct mental health treatment from the base hospital ward,” and the neuropsychological assessment conducted by a civilian mental health provider in 1995. Further, the Board considered your contention you were “not afforded fair representation during the court-martial proceedings,” “no one explained what was happening,” and you were “unable to process the magnitude of my sentencing.” Even under the liberal consideration standard, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your UA misconduct warranted an OTH characterization of service. Further, the Board concurred with the AO and concluded there was insufficient evidence of a mental health condition that may have mitigated your misconduct. The Board also

noted that you consulted counsel prior to submitting your request for discharge and, presuming government regularity, concluded you did not submit evidence that supports your contention that you were not “afforded fair representation” that fully explained the process. Finally, the Board noted you received a benefit from being allowed to separate with an undesirable characterization of service instead of risking greater punishment at a court-martial. The Board thus concluded that there is no probable material error or injustice in your record warranting corrective action.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the 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,

10/18/2020

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Executive Director

Signed by: █