

You enlisted in the Navy and began a period of active duty on 25 October 1989. On 9 March 1990, you received non-judicial punishment (NJP) for drunken driving. Additionally, you were issued an administrative remarks (Page 13) counseling warning documenting your deficiency in your conduct of a disciplinary nature with civilian or military authorities. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and administrative separation processing. On 17 January 1992, you were apprehended by ■ authorities for the alleged charge of robbery resulting in injury. Ultimately, on 12 October 1993, you were convicted by a ■ court of assault and robbery and sentenced to four years and six months of confinement.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to civilian conviction and commission of a serious offense. You elected your procedural right to consult with military counsel and to present your case to an administrative discharge board (ADB). Ultimately, the separation authority directed your administrative discharge from the Navy with an Other Than Honorable (OTH) character of service by reason of misconduct due to commission of a serious offense. On 18 August 1995, you were so discharged.

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 General (Under Honorable Conditions) or a better character of service because you were in the Gulf War and have PTSD. The Board considered your contentions that: (1) you incurred PTSD during your military service, (2) you failed to keep your good senses and while doing so you thought that you were having a good time with your fellow service members and made poor choices and fell out of character, (3) you were eight to ten months removed from combat, unsure of how you were doing or feeling about some things but looking back you believe that you could have used some counseling, (4) the weight of that evening has been a strenuous burden and you have made a conscience decision to set things right, and (5) you would very much like a correction to your record because your father was in Vietnam as a Marine and your brother was in the Navy assigned to a Marine Division, you would like very much to hold your head a little higher with them. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 8 February 2024. The AO stated 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, he has provided medical evidence of diagnoses of PTSD and other mental health conditions that are temporally remote to military service and appear unrelated. Unfortunately, his personal statement is 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is [insufficient] evidence to attribute his misconduct to PTSD or another 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 NJP and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command and the discrediting nature of your civilian conviction. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, and 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.

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 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, _____
4/19/2024

