



On 1 October 1987, you received NJP for unauthorized absence (UA) and failure to obey a lawful order from a petty officer. On 2 October 1987, you received NJP for willful disobedience toward a superior commissioned officer, disrespect toward a petty officer, failure to obey a lawful order, and assault upon a petty officer. You received Page 13 counseling and were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 17 December 1987, after your command initially referred charges to Special Court Martial (SPCM), you received NJP for willful disrespect toward a superior commissioned officer, three specifications of willful disobedience and disrespect toward a petty officer, and failure to obey a lawful general regulation.

On 18 December 1987, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to a pattern of misconduct. You elected to consult with legal counsel and subsequently waived your rights to submit a statement or have your case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 22 January 1988.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurt and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you suffered from anxiety and claustrophobia which mitigates your misconduct and that you should be given a discharge upgrade to allow you a better quality of life. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 29 January 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns including anxiety and claustrophobia during military service, which might have mitigated the circumstances of his separation. This opinion only addresses the mental health claims of the petition. I have reviewed the petition(s) and all available military service and medical records.

[Petitioner] denied mental health symptoms during his separation physical. 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 provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

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 likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined 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 explained in the AO, there is no evidence you were diagnosed with a mental health condition while in the military and you provided no evidence of your claim.

The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for misconduct due to a pattern of misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits or enhancing educational or employment opportunities.

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. 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. Accordingly, given the totality of the circumstances, the Board determined that 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,

4/2/2024

