



any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 31 July 1989, you commenced a period of unauthorized absence, during which you missed ship's movement, that ended in your surrender on 3 August 1989. On 14 August 1989, you commenced a period of UA that ended in your surrender on 16 August 1989.

On 18 August 1989, you commenced a period of UA, during which you missed four ship movements and were declared a deserter, that ended in your apprehension on 13 April 1990.

Between 21 April 1990 and 10 May 1990, you were seen several times by the psychiatric department, which included hospitalization for five days, for suicidal ideation. Ultimately, you were found psychiatrically fit for full duty with no evidence of clinical suicide risk and returned to duty.

On 11 May 1990, you commenced a period of UA, during which you were declared a deserter, that ended in your apprehension on 20 February 1991.

On 6 March 1991, you submitted a written request for an Other Than Honorable (OTH) discharge in order to avoid trial by court-martial for UA from 31 July 1989 to 3 August 1989, 14 August 1989 to 16 August 1989, 18 August 1989 to 13 April 1990, and 11 May 1990 to 20 February 1991. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted, and your commanding officer was directed to issue you an OTH discharge. On 14 March 1991, 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 change your discharge characterization of service and your contentions that you tried to commit suicide, signed to be relieved of duty instead of going to court, did not get proper legal advice, and did not know your rights. 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 30 January 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which might have mitigated the circumstances of his separation.

In April 1990, he was hospitalized for five days with suicidal ideation. He was returned to duty following the hospitalization with discharge diagnosis of situational Depression, partially resolved, and suicidal ideation, resolved. In May

1990, he was evaluated by psychiatry for risk of suicide after ingesting a capful of cleaning fluid and then spitting it out. He denied suicidal or homicidal ideation but endorsed feeling helpless after learning of his wife's experience of sexual abuse by her brother. He was found psychiatrically fit for full duty and recommended to contact Navy Family Services Center and their Family Advocacy Program.

During military service, Petitioner was evaluated and diagnosed with situational depression that resolved during hospitalization. There is no evidence of a diagnosis of PTSD. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given his UA that was both before and after his hospitalization.

The AO concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service (situational depression). There is insufficient evidence of a diagnosis of PTSD. 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 NJP and separation in lieu of trial by court martial, 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 while there is in-service evidence of a mental health condition that may be attributed to military service (situational depression), there is insufficient evidence of a diagnosis of PTSD. The Board also concurred with the AO in determining that there is insufficient evidence to attribute your misconduct to a mental health condition. Finally, the Board noted that the record indicates you conferred with counsel and initiated a request for an OTH discharge in lieu of facing trial by court-martial and the potential penalties of confinement and a punitive discharge. The Board believed considerable clemency was extended to you when your request was approved, and the Board was not persuaded by your contention that you did not receive proper legal advice and did not know your rights.

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,

3/27/2024

