



On 11 March 1991, you commenced a period of UA that ended in your surrender on 9 April 1991. On 16 May 1991, you were found guilty of thirty-eight days of UA at Summary Court Martial (SCM).

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. In the meantime, you received NJP for violation of a lawful general order or regulation. Ultimately, the Separation Authority directed your discharge with an OTH characterization of service for commission of a serious offense and you were so discharged on 17 October 1991.

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 your actions were a direct result of your mental health issues and should have been recognized as such and, that post-discharge, you served the federal government for twenty-two years and have had no criminal history. 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 13 March 2024. The AO stated in pertinent part:

In December 1990, he was evaluated by a military psychologist following return from UA. He reported situations stressors, including family and girlfriend pressure. He did not meet criteria for a formal mental health diagnosis, but mild, situational depression was noted.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician.

Unfortunately, he has provided no medical evidence to support his claims. Available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior.

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 and SCM, 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 insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions.

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,

5/16/2024

