



Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy, on 5 September 2022, with a “General (Under Honorable Conditions)” characterization of service, your narrative reason for separation is “Misconduct - Drug Abuse,” your reenlistment code is “RE-4,” and your separation code is “JKK,” which corresponds to misconduct due to drug abuse.

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 narrative reason for separation to “mental health disorder.” The Board considered your contention that you started showing signs of major stress and depression, you were diagnosed with bipolar and put on medication, the length of time that you were waiting for your separation caused you more depression and stress and caused you to make poor/rash decisions. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 6 March 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated and treated during his enlistment. His Bipolar Disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. There is no evidence of a diagnosis of PTSD. Unfortunately, he has provided no medical evidence to support his claims. There is insufficient evidence to attribute his substance use to his mental health concerns, given his in-service statements regarding his substance use. 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 in-service 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.”

In response to the AO, you submitted a statement that provided additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 administrative separation by reason of misconduct due to drug abuse, outweighed these

mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board concurred with the AO that while there is in-service evidence of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, there is insufficient evidence to attribute your substance use to your mental health concerns, given your in-service statements regarding your substance use, and you were appropriately referred for psychological evaluation and properly evaluated and treated during your enlistment. 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. Additionally, based on your administrative separation processing for misconduct, the Board determined that you were ineligible for a “mental health disorder” discharge even if there was evidence to support your referral to the Disability Evaluation System. The Board concluded you were responsible for your misconduct that formed the basis for your discharge and discerned no impropriety or inequity in your assigned narrative reason for separation.

Therefore, while the Board carefully considered the evidence you submitted in mitigation, 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. 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 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,

4/24/2024

