



danger of considerable psychiatric problems if present situation continues.” On 24 August 1972, you requested to change your rating from steward apprentice to undesignated seaman apprentice. Your request was denied, on 13 September 1972, by the Bureau of Naval Personnel due to low manning in the Steward rating. Your ship operated in the Vietnam contiguous waters from 31 December 1972 to 1 January 1973.

On 1 June 1973, you transferred to another ship and commenced a twenty-five-day period of unauthorized absence (UA), on 4 June 1973, that ended in your surrender on 29 June 1973. On 6 July 1973, you were granted a Drug Use Exemption and disclosed use of the following illegal drugs: Marijuana - daily from August 1971 to July 1973, Speed - three to four times per week from December 1972 to July 1973, Seconal – one time per month from December 1972 to July 1973, “Yellows” – one time between March 1973 and July 1973, and Cocaine – one time in November of 1972. You received drug counseling and were reported as depending on drugs to cope with stress-producing situations.

On 27 August 1973, you commenced a forty-four-day period of UA, during which you missed ship’s movement and were declared a deserter, that ended in your apprehension by civil authorities for drug possession. The charges were dropped, and you were returned to military control on 10 October 1973.

On 14 December 1973, you were found guilty at Summary Court Martial (SCM) of 2 specifications of UA, from 4 June 1973 to 29 June 1973 and from 27 August 1973 to 10 October 1973. On 22 January 1974, you broke restriction and commenced a period of UA, during which you were declared a deserter, that ended in your surrender on 1 July 1974.

The charge of UA from 22 January 1974 to 1 July 1974 was referred to Special Court-Martial (SPCM). Later, additional charges of marijuana and drug paraphernalia possession and underage drinking were added to your pending SPCM charges.

On 12 August 1974, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial. 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. You submitted a statement indicating that you desired a discharge because you felt like a piece of property owned by the government, that you were nothing but an underpaid janitor, that you had trouble with one of the petty officers in your shop and threatened to kill him, and that you went UA to “escape the tyranny.” Your request was granted, and your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 19 September 1974, 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 served your country in Vietnam and then were told you were going back to war, your misconduct was due to mental health issues you incurred from being teased by the crew and treated poorly by your leading petty officer, your request to change ratings was denied which further exacerbated your mental health issues, and

that you are in need of Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered your statement, and the advocacy letters you provided.

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 9 April 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have mitigated the circumstances of his separation.

Petitioner contended he incurred depression during military service due to poor treatment he received from leadership who denied his request to change rates and contributed to his misconduct.

There is evidence that he was diagnosed with a situational reaction, which could be considered an adjustment disorder and possibly a precursor to a diagnosis of depression. However, there is no evidence of a formal diagnosis of depression and the Petitioner has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to provide a sole explanation for his misconduct, particularly given his repeated and lengthy UA and substance use troubles throughout his military service.

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 all of 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 SCM 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 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 impact your repeated misconduct had on the good order and discipline of your command. 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 request for an undesirable discharge to avoid trial for your offenses. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. 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, there is insufficient evidence to attribute all of your misconduct to a mental health condition. 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

6/24/2024

