



counseling you concerning deficiencies in your performance and conduct. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 26 April 2005, you received a second NJP for failure to obey order or regulation by wrongfully allowing a female Sailor to enter male berthing and rub your shoulders.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and pattern of misconduct. You waived your procedural right to consult with military counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense. On 15 June 2005, 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 upgrade your discharge character of service and contention that you were dealing with mental health issues while on active duty that were spiraling out of control, you are now receiving limited mental health treatment and doing better, granting you an upgrade of your discharge would allow you to receive the proper mental health care from the Department of Veterans Affairs (VA). 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 contentions and the available records and provided the Board with an AO on 30 April 20024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, the VA has granted service connection for PTSD. It is possible that his misconduct could be attributed to undiagnosed symptoms of irritability and avoidance related to PTSD. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the Petitioner to attribute his misconduct to PTSD."

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 brevity of your service during which you committed these multiple offenses along with the

nature of the offenses, and concluded your misconduct showed a complete disregard for military authority and regulations. Further, despite the conclusion of the AO, the Board did not find sufficient evidence to establish any nexus between your mental health condition and the misconduct for which you were discharged. The Board did not question that you suffered from a mental health condition, but simply felt that it had insufficient information regarding the nature and manifestation of your condition upon which to draw any reasonable conclusions; especially how your mental health condition manifested by allowing a female into male berthing to rub your shoulders. Finally, the Board took into consideration that, according to your separation documents, your “disruptive and substandard behavior” had been a continuous “administrative burden to the command” and, despite being given numerous opportunities to correct your behavior and conform to the rules and regulations of naval service, you “repeatedly demonstrated no desire to improve your behavior or contribute to the mission.”

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, 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 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,

6/11/2024

