



may result in disciplinary action and in processing for administrative separation. On 21 May 1997, you received your second NJP for drunk while on duty as a member of the duty section. On 23 May 1997, you were evaluated and diagnosed with enuresis.

On 11 June 1997, you were notified that you were being recommended for an administrative discharge from the Navy by reason of convenience of the government based on other designated physical condition and misconduct due to commission of a serious offense. You were advised that the least favorable character of service you may receive is General (Under Honorable Conditions) (GEN). After you waived your rights, the separation authority directed your discharge from the Navy with a GEN characterization of service. On 25 July 1997, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 19 January 2006, based on their determination that your discharge was proper as issued.

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 contentions that: (1) your discharge was improper, inequitable, and erroneous, (2) your conduct patterns have changed, in the past you had problems with misconduct, drugs, and alcohol, (3) the reason for your past misconduct was due to a mental health condition that you were previously unaware of having, (4) you believe that your mental health condition was taking over as the primary contributor to your misbehavior and, therefore, your discharge character of service is inequitable, and (5) the change in your living conditions, being away from home, and having little resources are the reasons for your misbehavior. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application, including your personal statement describing the circumstances of your case.

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. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His diagnoses of alcohol use disorder and enuresis were 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. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. His in-service misconduct appears to be consistent with his diagnosed alcohol use disorder. There is insufficient evidence of error in his in-service treatment. His post-service diagnoses of other mental health conditions are temporally remote to military service and appear unrelated. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of error in his in-service diagnosis.”

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 seriousness of your misconduct and the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that, there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence of error in your in-service diagnosis. As the AO explained, there is insufficient evidence of error in your in-service treatment, you were appropriately referred for psychological evaluation, and properly evaluated during your enlistment. Finally, the Board determined your post-service diagnoses are temporally remote to military service, and appear unrelated. 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.

Furthermore, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active-duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.0 in conduct/military behavior. Navy regulations in place at the time of your discharge recommended a minimum trait average of 2.0 in conduct/military behavior, for a fully Honorable characterization of service; a minimum mark you failed to achieve due, in part, to your misconduct. In reviewing your record, the Board determined that an Honorable discharge was appropriate only if the Sailor’s service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded your record of service did not meet this standard of merit based on your NJPs and conduct marks accumulated over your relatively brief period of service. In fact, the Board determined you were fortunate to receive a GEN characterization of service based on your record of misconduct.

As a result, the Board determined significant negative aspects of your active duty service outweighed the positive and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge educational 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,

7/5/2024

