



counseling concerning deficiencies in your performance and/or conduct, including a pattern of misconduct, and for keeping unsanitary living conditions in your place of billeting. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 6 April 2004, you received NJP for two specifications of UA. On 14 October 2005, you received NJP for failure to obey a lawful order.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of pattern of misconduct. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service. However, you were issued a DD Form 214 with a General (Under Honorable Conditions) (GEN) characterization of service on 17 November 2005.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 22 December 2016, 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 contention that your misconduct is mitigated by your post-service diagnosis of PTSD, and you would like to pursue Department of Veterans Affairs (VA) benefits and compensation. For purposes of clemency and equity consideration, the Board considered your statement, the letter from a Clinical Social Worker, 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 22 May 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have mitigated the circumstances of his separation.

Petitioner provided a brief November 2023 letter from his civilian mental health provider explaining that "he has certain limitations related to PTSD and anxiety... He served his country and is entitled to compensation for the injuries he received during combat."

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, he has received a diagnosis of PTSD from a civilian provider that has been attributed to combat exposure. While his misconduct does all follow his return from Iraq, there is insufficient evidence to attribute piercing, fraternization, unsanitary living conditions, and driving with a suspended license to PTSD symptoms. It is possible that UA could be considered a behavioral indicator of PTSD avoidance symptoms.

The AO concluded, “it is my clinical opinion there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of 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 seriousness of your misconduct and 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 discharge for a pattern of misconduct. Additionally, the Board concurred with the AO and determined that, while there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute all of your misconduct to PTSD. 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.

As discussed earlier, the Board noted that your DD Form 214 erroneously reflects you were discharged with a GEN characterization of service rather than the approved OTH characterization. Consistent with existing policy not to make record corrections that would negatively affect Petitioners, the Board did not direct the correction of your DD Form 214.

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,

7/18/2024

