



for an upgrade, on 20 December 2012 and 12 July 2021, based on their determination that your discharge was proper as issued. The facts of your case remain substantially unchanged.

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, change your paygrade from E-2 to E-4, and remove all derogatory information from your military service regarding your non-judicial punishments (NJPs). The Board considered your contentions that: (1) you incurred PTSD from the casualties that you witnessed, including the loss of a friend and mentor, during your deployments, (2) you incurred serious injuries during a motorcycle accident while you were on approved leave, this resulted in mistreatment by your command when they ignored the medical advice regarding your requirements for return to duty, (3) your separation proceedings were a culmination of misconduct perceived by the Marine Corps, (4) you personally requested administrative separation due to the lack of faith and improper leadership which you experienced during your enlistment, and (5) the Department of Veterans Affairs (VA) upgraded your discharge to Honorable and provided facts of military service-related mental health condition that attributed to your misconduct. 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 23 May 2024. The AO stated in pertinent part:

Petitioner was evaluated on multiple occasions during military service and generally denied mental health symptoms. He received a diagnosis of mental health condition, adjustment disorder, in the context of occupational, legal, and academic stressors. Post-service, he has been granted service connection for PTSD. It is possible that some of his UA in service could be attributed to impaired judgement and irritability, due to unrecognized symptoms of PTSD following deployment. However, it is difficult to attribute all of his extended UA to PTSD avoidance, given the length of the absence and the decision to remain away until apprehended. Additionally, the misconduct leading to his first NJP cannot be attributed to PTSD or another mental health condition, as it occurred prior to his deployment and he claims is related to his ignorance of procedure. The misconduct leading to his second NJP cannot be attributed to PTSD, as he contends it is related to false charges and command miscommunication.

The AO concluded, "it is my clinical opinion there is in-service evidence of a mental health condition. There is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another 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

NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that, while there is in-service evidence of a mental health condition and post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute all of your misconduct to PTSD or another mental health condition. As the AO explained, you were evaluated on multiple occasions during your military service and generally denied mental health symptoms. Further, the Board agreed that while it is possible that some of your misconduct in service could be attributed to impaired judgement and irritability, due to unrecognized symptoms of PTSD following deployment, it is difficult to attribute all of your misconduct to PTSD avoidance, given the length of your absence, your decision to remain away until you were apprehended, the fact your first NJP occurred prior to your deployment, and your second NJP, according to you, was related to false charges and command miscommunication. 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, and the Board discerned no impropriety or inequity in your paygrade at the time of your discharge. Furthermore, VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active-duty service discharge characterizations.

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 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,

7/26/2024

