



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 narrative reason for separation and SPD code. The Board considered your contentions that you never refused a direct order, never had trouble with civilian authorities, never used drugs, and made a bad decision because of your mental state of mind. You argue that you have read previous Board decisions where other individuals who have done a lot worse than you have and had their reason for separation changed to "Secretarial Authority." 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 6 May 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is evidence of mental health symptoms. Temporally remote to his military service, he has received service connection for a mental health condition. It is possible that his UA could be considered a behavioral indicator of mental health concerns and attributed to avoidance due to anxiety symptoms.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is some post-service evidence to attribute 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 your narrative reason for separation and SPD code remains appropriate in your case. In making this finding, the Board considered the brevity of your active duty service, the incidents of misconduct during your period of active duty, the previous grant of relief, and the lack of any documentation describing post-discharge accomplishments or advocacy letters. Based on these factors, despite conclusion reached by the AO and the existence of a mental health condition, the Board determined your original grant of relief was sufficient to remove any injustice from your record. The Board was not persuaded by your argument that other Petitioners received the requested relief under similar circumstances since each record is unique and adjudicated based on the evidence presented.

Therefore, 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,

6/11/2024

