



warning formally counseling you concerning deficiencies in your performance and conduct. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 28 March 1997, you received a mental health evaluation and were diagnosed with personality disorder. On 22 May 1997, you received a second NJP for UA in violation of Article 86, UCMJ and disobeying a lawful order from a warrant officer in violation of Article 91, UCMJ.

On 14 May 1997, you submitted a written request for separation in lieu of trial (SILT) by court-martial for violation of a lawful general regulation by wrongfully possessing a dangerous weapon within a place under naval jurisdiction under Article 92, UCMJ, breach of peace in violation of Article 116, UCMJ, assault in violation of Article 128, UCMJ, and unlawfully carry on your person a concealed weapon and communicate a threat in violation of Article 134, UCMJ. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be Under Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service by reason of separation in lieu of trial by court-martial. On 13 June 1997, 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 contentions that at the time of your discharge, you were not aware of your type of discharge or your reason for separation because you were hospitalized, you were suffering from undiagnosed PTSD with anxiety and mood depressive disorder which led to your discharge character of service, and you need medical help for your PTSD. For purposes of clemency and equity consideration, the Board considered the supporting 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 20 May 2024. The AO stated in pertinent part:

During military service, the Petitioner was properly evaluated and diagnosed with a personality disorder. There is no evidence of another mental health condition, and the Petitioner has provided no medical evidence to support his claims. His misconduct appears consistent with his characterological traits, rather than evidence of a mental health condition incurred in or exacerbated by military service. 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is

insufficient evidence to attribute his misconduct to PTSD or a mental health condition, other than personality disorder.”

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 and SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board noted that the misconduct that led to your SILT request was substantial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO that, there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition, other than personality disorder. As the AO explained, there is no evidence of another mental health condition, and you have provided no medical evidence to support your claims. 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. 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, 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

