

On 18 July 1996, you received non-judicial punishment (NJP) for wrongful use of cocaine. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. 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, and you were so discharged on 15 August 1996.

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 discharge characterization of service and your contentions that you suffer from PTSD due to mental and physical abuse while in the Navy which led to substance abuse. For purposes of clemency and equity consideration, the Board considered your statement, advocacy letters, and Department of Veterans Affairs (VA) application you submitted.

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 5 June 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to the circumstances of his separation.

In July 1996, the Petitioner received non-judicial punishment (NJP) for wrongful use of cocaine. He submitted a statement that "with all the commotion [sic] about drug use...and my dislike for the way...[my department] is ran [sic] I decided to experiment with a drug. I felt I was waisting[sic] much of my time and skills in the Navy with the chance of going to college before I was 20 made me all the more daring."

In August 1996, he was discharged under other than honorable conditions. His complete service medical record was not available for independent review. He denied mental health symptoms during his separation physical.

Petitioner submitted a December 2023 Department of Veterans Affairs (VA) claim of stress from hazing in his duty section, which resulted in "drinking on the Naval base with his free days, drinking led to smoking marijuana with other enlisted on the Naval base, under the Pier...later [he] used cocaine after drinking due to his illnesses" of PTSD and other mental health conditions.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, given pre-service behavior that appears to have continued in service. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not

sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition. There is insufficient evidence to attribute 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, you exhibited no psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, given pre-service behavior that appears to have continued in service.

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,

8/21/2024

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Executive Director

Signed by: ■