



totaling 11 days. Additionally, you were issued an administrative remarks (Page 13) retention 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 26 April 1993, you commenced a period of UA that concluded upon your apprehension and return to military authorities on 25 August 1993; a period totaling 119 days.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. You DD Form 214 documents that, on 8 September 1993, you were discharged from the Navy with an OTH characterization of service, the separation authority is "MILPERSMAN 3630650 & ■ DTD 1993SEP07," your reentry code is "RE-4," and your separation code is "KFS;" which corresponds to escape trial by court martial.

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 contention that you were suffering from undiagnosed bi-polar disorder and began your period of UA during an episode of depression. 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 contention and the available records and provided the Board with an AO on 18 June 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Temporally remote to his military service, he has received diagnoses and treatment of mental health concerns that appear unrelated to his military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 mental health condition that may be attributed to military service. There is insufficient 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 that your misconduct, as evidenced by your NJP, lengthy period of UA, 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 potential punitive discharge. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, the post-discharge diagnosis is temporally remote to your service and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. 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.

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,

8/23/2024

