



2007, you were issued a Page 13 counseling concerning deficiencies in your performance and conduct. Specifically, disorderly conduct as a result of intoxication/drunkenness.

On 6 May 2008, you were re-evaluated following an alcohol related incident and diagnosed with alcohol dependence. On June 2008 and July 2008, you again participated in IOP during which time you were diagnosed with alcohol abuse. On 16 July 2008, you were given a mental health evaluation and diagnosed with adjustment disorder with depressed mood.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file. 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), you were separated from the Navy, on 30 January 2009, with a "General (Under Honorable Conditions) (GEN)" characterization of service, your narrative reason for separation is "Pattern of Misconduct," your reenlistment code is "RE-4," and your separation code is "JKA," which corresponds to misconduct due to pattern of misconduct.

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: (1) you understand that your actions were not the correct way to ask for help, (2) during your time in service, you were diagnosed with a traumatic brain injury (TBI), and although you were not diagnosed with PTSD in service, you were suffering with PTSD, (3) you were not aware that you were suffering from an untreated mental illness nor did the Navy, (4) you received a service connection disability from the Department of Veterans Affairs (VA) for PTSD and TBI, (5) you owned your mistakes and made the changes needed to live a productive life, and (6) you desire an upgrade to become eligible for veterans benefits. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application, including your personal statement describing the circumstances of your case and advocacy letters.

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 25 June 2024. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with and received extensive treatment for Alcohol Use Disorder. He also received another mental health diagnosis of Adjustment Disorder and there is record of a head injury in service. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. The Petitioner's misconduct appears to be related to problematic alcohol use, rather than self-medication of other mental health symptoms. 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 post-service evidence from the VA of diagnoses of PTSD, TBI, and other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition, other than alcohol use disorder.”

In response to the AO, you submitted additional supporting documentation that provided clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 multiple Page 13 counselings and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of diagnoses of PTSD, TBI, and other mental health concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition, other than alcohol use disorder. As the AO explained, your misconduct appears to be related to problematic alcohol use, rather than self-medication of other mental health symptoms. Additionally, the Board determined your VA rating is too temporally remote from your military service. 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. Furthermore, the Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Based on your record of misconduct, after two attempts by the Navy to rehabilitate your alcohol abuse, the Board determined you were fortunate to receive a GEN characterization of service and already received a large measure of clemency. 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 significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

8/1/2024

