



processing for administrative separation. In May 2004, you completed Level II Treatment for alcohol use disorder. On 29 July 2004, you received NJP for UA and failing to obey a lawful written order by failing to sign out in the liberty log. On 14 October 2004, you were issued a Page 13 retention warning formally counseling you regarding your failure to complete the required follow-on counseling sessions as mandated upon completion of Level II alcohol treatment and misappropriation of a backpack. On 3 November 2004, you received NJP for UA a period totaling three days, failure to go to your appointed place of duty, and incapacitated for duty due to overindulgence in alcohol.

Unfortunately, some documents pertinent to your administrative separation proceedings 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. The record shows the commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service due to pattern of misconduct and alcohol rehabilitation failure. The separation authority directed your OTH discharge from the Navy by reason of misconduct due to pattern of misconduct and, on 18 November 2004, 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: (1) while serving you were assaulted and this assault resulted in a traumatic brain injury (TBI), (2) leading up to your assault you did not have any patterns of misconduct, and (3) following the assault, you experienced PTSD and depression which led to a pattern of misconduct that resulted in your discharge. You assert that you continue to struggle with the effects of the TBI. 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 25 July 2024. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Post-service Department of Veterans Affairs (VA) records indicate that problematic alcohol consumption contributed to the circumstances of the Petitioner's TBI and subsequent PTSD and other mental health concerns. While it is plausible that his alcohol use disorder may have worsened following his head injury, it is difficult to attribute his misconduct to TBI, PTSD, or another mental health condition, given the chronic and repetitive nature of his alcohol use. 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.”

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. 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, while it is plausible that your alcohol use disorder may have worsened following your head injury, it is difficult to attribute your misconduct to TBI, PTSD, or another mental health condition, given the chronic and repetitive nature of your alcohol use. Finally, 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 multiple opportunities to correct your conduct deficiencies during your service: however, you continued to commit additional misconduct.

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. 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,

9/27/2024

