



Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: (1) your military records contain inconsistencies indicative of cognitive impairments associated with major depressive disorder and psychiatric issues, (2) your undiagnosed mental health struggles were inadequately addressed by military medical personnel, (3) your multiple coinciding mental health disorders and the interaction of these conditions have resulted in significant challenges for you functioning both during and after your service, (4) you have been formally diagnosed with “psychiatric issues and major depressive disorder” which have been directly connected to your military service, (5) the Department of Veterans Affairs have cleared you of the desertion charges based on an understanding of your mental health circumstances, and (6) given the clear link between your mental health challenges and your service, BCNR should reconsider its prior decisions and correct your military records and upgrade your discharge status. 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 26 July 2024. The AO stated in pertinent part:

Petitioner’s mental health concerns were considered during his enlistment and deemed not disabling. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns that are attributed to military service. Unfortunately, there are inconsistencies in the record that raise doubt regarding the reliability of the Petitioner’s recall and report during post-service evaluations. More weight has been given to earlier statements that his UA was due to family stressors over later statements that his UA was due to avoidance due to PTSD 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 civilian providers of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you submitted additional supporting documentation that provided additional 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 your misconduct as evidenced by your SPCM conviction, 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 and determined that while there is post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained,

your mental health concerns were considered during your enlistment and were deemed not disabling. 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 a BCD. 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 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,

