



character of service and contentions that: (1) your characterization of service does not accurately reflect your overall service, (2) you incurred medical and psychological symptoms following exposure to x-ray radiation due to your naval occupation as a Dental Technician, (3) you developed Gulf War Syndrome following exposure during your deployment in Operation Desert Shield/Storm, (4) you received a diagnosis of adjustment disorder attributing to your military service, (5) your medical and mental health disabilities were not considered in determining an appropriate and accurate character of service, (6) you believe that your actions were the result of impulsivity and poor judgment that you were unable to manage at that time, (7) a correction to your record is necessary for you to received ongoing treatment from the Department of Veterans Affairs (VA), and (8) you believe that a correction also allows your discharge to represent your service, and not isolated to one event that is outside of your character for service. 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, qualified mental health professionals reviewed your contentions and the available records and provided the Board with an AO on 30 July 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for a mental health evaluation during military service and properly evaluated by a civilian psychologist. There is no evidence that he was diagnosed with a formal mental health condition in military service, although he was recommended for treatment for sexual offenders and his sexual misconduct was supported by his in-service mental health evaluation. Temporally remote to his military service, the VA has provided treatment for medical concerns related to the possible exposure to toxins during service. The Petitioner has also claimed that he has received a diagnosis of Adjustment Disorder from the VA. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly as sexual misconduct is not a symptom typically associated with adjustment difficulties or neurological deficiencies as a result of exposure to toxins.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of treatment of medical concerns that may be attributed to military service. There is post-service evidence from the Petitioner of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a medical or 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 civilian conviction and non-judicial punishment, 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. The Board also considered the negative impact your conduct likely had on the good order and discipline of your command and the discrediting nature of your civilian conviction. Further, the Board concurred with the AO that, while there is post-service evidence of treatment of medical concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a

medical or mental health condition. As the AO explained, the available records are not sufficiently detailed to provide a nexus with your misconduct, particularly as sexual misconduct is not a symptom typically associated with adjustment difficulties or neurological deficiencies as a result of exposure to toxins. Additionally, the Board observed that you were appropriately referred for a mental health evaluation during military service and properly evaluated by a civilian psychologist. Finally, temporally remote to your military service, the VA has provided you treatment for medical concerns related to your possible exposure to toxins during 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. The Board found that your misconduct was intentional and made you unsuitable for continued naval service.

Additionally, there is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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 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,

10/2/2024

