



Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and drug abuse. You waived your procedural right to consult with counsel and to present your case to an administrative discharge board. The commanding officer (CO) 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. As part of the CO's recommendation, he stated in pertinent part:

[Petitioner] is not suitable for continued naval service as evidenced by his repeated disregard of Navy regulations. All efforts by this command to instill a sense of pride and responsibility in him have had not positive effect. He was afforded Level III treatment to help combat his dependency on alcohol and as directed by his aftercare program to submit a urinalysis each week, he tested positive for cocaine

The separation authority directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and, on 8 May 1992, 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 your leg injury that you sustained during boot camp contributed to your development of alcohol use disorder, as a recovering alcoholic you were put into a situation and set up for failure when you were placed into the same room with another individual who had a drug addiction, and the same individual was doing drugs in your presence. For purposes of clemency and equity consideration, the Board considered your statement and 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 6 August 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. He has provided no additional medical evidence to support his claims. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition incurred in service, given pre-service behavior that appears to have continued in service. 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also considered the likely negative effect your misconduct had on the good order and discipline of your unit. 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, there is insufficient evidence to attribute your misconduct to a mental health condition incurred in service, particularly given your pre-service behavior that appears to have continued in service. The Board also noted that you provided no additional medical evidence to support your claims. 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 observed that you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct. Additionally, the Board considered that you provided no evidence, other than your statement, to substantiate your contentions regarding the circumstances surrounding your drug abuse. Nevertheless, despite testing positive for cocaine, the Board noted that you instead admitted to using marijuana in your personal statement to the Board. Consequently, this raised serious concerns regarding the credibility of your version of events. 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 your statement and 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,

10/23/2024

