

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] has proven to be non-productive and an administrative burden. He is a detriment to morale, and blatantly, with criminal intent uttered approximately \$2000.00 in bad checks. NJP was conducted for the amount of \$1250 of fraudulent checks drawn at the Navy Exchange, ■■■■■ of the ■■■■■. Following NJP, the command received notice of \$675 additional in fraudulent checks. Additionally, [Petitioner] has approximately \$4000 in outstanding visa bills. He has failed to pay these commitments and has incurred over \$6500 in insurance bills resulting from auto accidents. [Petitioner] drew the checks with full knowledge of insufficient funds. His casual attitude towards the NJP violations and irresponsible financial behavior are totally unacceptable and warrant an other than honorable discharge.

The separation authority directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and, on 17 March 1990, 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 to allow you to utilize your medical care benefits from the Department of Veterans Affairs. The Board considered your contentions that: (1) you have had Tourette Syndrome your entire life and you were not diagnosed until "roughly 2004/2005," (2) during your deployment you developed a negative relationship with your Command Master Chief (CMC) and Division Officer (DIVO), (3) you requested a transfer, but your request was unsuccessful, this added to the animosity between yourself and your superiors creating a certainty of failure for your military career, and (4) the stress from the situation was palpable and you were not mentally capable of handling the situation. 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 14 August 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received a diagnosis of Tourette's Disorder, which is a condition comprising motor and vocal tics. While it is probable that he may have experienced vocal or motor tics during military service, they do not appear to have been sufficiently impairing as to require intervention or even notation in his service medical record. It is also difficult to consider how financial mismanagement would

be attributed to a tic disorder. 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 to attribute his mental health condition 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 NJP and counseling, 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your mental health condition to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, while it is probable that you may have experienced vocal or motor tics during military service, they do not appear to have been sufficiently impairing as to require intervention or even notation in your service medical record and it is difficult to consider how financial mismanagement would be attributed to a tic disorder. Furthermore, the Board determined your diagnosis of Tourette's Disorder 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. 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 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

