



missed ship's movement. On 14 May 2007, you were convicted by civilian authorities of assault and battery and use of a dangerous or deadly weapon.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct, commission of a serious offense, and civilian conviction. You waived your right to consult with counsel and to present your case to an administrative discharge board. 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. The separation authority directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and, on 19 June 2007, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 31 August 2016, based on their determination that your discharge was proper as issued.

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 change your reenlistment code and upgrade your discharge character of service. You contend that you have gone through the proper procedures and steps to get your felony removed from your record in order to open up more job opportunities and to seek medical aid. For purposes of clemency and equity consideration, the Board considered the supporting 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 August 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, the Petitioner has received a diagnosis of PTSD that has been attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given pre-service behavior and the extended period post-service in which symptoms were not sufficiently interfering as to seek treatment. 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 a civilian mental health provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

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 that your misconduct, as evidenced by your NJP and civilian 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. 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 from a civilian mental health provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD. As the AO explained, the available records are not sufficiently detailed to establish a nexus with your misconduct, given your pre-service behavior and the extended period post-service in which symptoms were not sufficiently interfering as to seek treatment. 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. 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 and commends you on your rehabilitation efforts, even in light of the Wilkie Memo and reviewing the record 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,

10/2/2024

