



9 May 1990, you received NJP for UA, disrespectful language toward two petty officers, and communication of a threat toward two petty officers. On 16 June 1990, you were issued Page 13 counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 22 September 1990, you received NJP for disrespectful language toward an officer, contempt and disrespect toward a chief petty officer, and for knowing disobedience of a lawful order from an officer and a chief petty officer. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions. The separation authority concurred with the ADB, approved and directed an OTH discharge by reason of misconduct due to pattern of misconduct, and you were so discharged on 1 November 1990.

You previously applied to this Board for an upgrade to your characterization of service where you contended that you were young, did not understand your rights, and served two-and-one-half years without misconduct. The Board denied your request on 27 February 2018.

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 discharge characterization of service and your contentions that pre-service trauma caused you to suffer from PTSD, your PTSD was exacerbated by the stress and demands of military life and by your wife's affair with another servicemember, and you desire Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letters, and pre- and post-service counseling documentation you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 8 October 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns (PTSD) during military service, which might have mitigated his discharge characterization of service.

The Petitioner noted on his separation physical, "Stressful situation due to job, marriage, and finances...Needed counselors. Command did not react to my problem right [*sic*]." He was separated from service in November 1990 with an Other than Honorable characterization of service due to pattern of misconduct.

The Petitioner submitted a progress report/case review dated October 1985 (pre-service) that notes depression, anxiety, and "problems of accepting reality and identification." The note further states, "He is an impulsive person and wants things done his way when he says it." He submitted an unsigned letter from a licensed professional clinical counselor noting that the Petitioner completed an initial

evaluation on May 23, 2024, and was diagnosed with PTSD. The rationale for/etiology of the diagnosed PTSD was not further elaborated upon. It is unknown whether the Petitioner attended counseling after this initial evaluation. Furthermore, the Petitioner did not mention any PTSD or symptoms thereof in a previous petition or during any of his separation proceedings.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed 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 likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct; which ultimately led to your discharge for a pattern of misconduct. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. 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 for your post-discharge good character, 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,

12/19/2024

