



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 your contentions that: (1) you were unable to train in your “field of explosives handling” because of mental health issues that were service connected to Operation Desert Storm, (2) the Department of Veterans Affairs (VA) has classified your absences as a disability problem and that it is related to service-connected disabilities, (3) you have carried the stigma of your Other Than Honorable discharge your entire life, (4) the trauma you faced during the war should have been addressed, (5) your record shows that you requested mental health assistance and that no assistance was provided, (6) it took you many years to realize that you experienced mental health issues, and your chain of command did not provide you with the obligated care you requested, (7) the VA has rightfully recognized the extreme trauma that you endured during your service, (8) a qualified psychologist from the Veterans Evaluation Services (VES) has confirmed that you suffer from a disability directly linked to the trauma you endured during Operation Desert Storm, and (9) your missed reserve drills were not a result of misconduct rather a consequence of untreated trauma and illness. For purposes of clemency and equity consideration, the Board considered your statement describing the circumstances of your case and documentation from the Department of Veterans Affairs but no documentation describing post-service accomplishments or advocacy letters.

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 17 September 2024. The AO stated in pertinent part:

There are some inconsistencies between the Petitioner’s report and his service record which raise doubt regarding the reliability of the Petitioner’s recall with the passage of time and intervening events. He claims that he sought a mental health evaluation in February 1991 and his command did not follow-up. However, the service record states that his unit leadership expressed “some concerns about...[the Petitioner’s] mental state...The command would like a Medical Officer’s evaluation.” Additionally, in his previous request for review, the Petitioner stated that he was not in unsatisfactory drill status prior to his October 1988 return to active duty, which is not consistent with the information in his record.

There is no evidence that he was diagnosed with a mental health condition in military service, although there is evidence that he may have been demonstrating sufficient mental health difficulties to warrant a referral for further evaluation. Available evidence in the record indicates that his command did initiate a referral, but that there was no follow-up.

Temporally remote to his military service, the VA has granted service connection for mental health concerns. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his history of poor drill attendance prior to his combat deployment.

The AO concluded, “it is my clinical opinion that there is post-service evidence from the VA of mental health concerns that may be attributed to military service. There is insufficient to attribute his misconduct to a mental health condition.”

In response to the AO, you submitted additional supporting documentation that provided additional clarification of the circumstances of your case. 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 multiple unexcused absences from drill participation, outweighed these mitigating factors. In making this finding, the Board the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of mental health concerns that may be attributed to military service, there is insufficient to attribute your misconduct to a mental health condition. As the AO explained, there is no evidence that you were diagnosed with a mental health condition in military service, although there is evidence that you may have been demonstrating sufficient mental health difficulties to warrant a referral for further evaluation. Furthermore, the available evidence in the record indicates that your command initiated a referral, but that there was no follow-up concerning the referral. Additionally, the available records are not sufficiently detailed to establish a nexus with your misconduct, particularly given your history of poor drill attendance prior to your combat deployment. Finally, the Board determined your VA rating 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.

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 documentation 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,

11/13/2024

