



administrative remarks (Page 13) formally counseling you concerning deficiencies in your performance and conduct; specifically, violation of Article 86, Article 92 and Article 113. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 2 April 1991, you received a mental health evaluation and were diagnosed with adjustment disorder. On 24 October 1991, you received your second NJP for larceny and wrongful appropriation. On 2 April 1992, you received your third NJP for false official statement. On 11 June 1992, you received your fourth NJP for wrongful use of cocaine.

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 were advised of your procedural rights and elected your procedural right to consult with military counsel; however, you waived your right 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. The separation authority directed your OTH discharge from the Navy by reason of misconduct due to commission of a serious offense and you were so discharged on 22 July 1992.

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 so that you may receive “VHA benefits” that you earned due to your “wartime service.” The Board considered your contentions that: (1) after returning home from your six-month deployment you had “untreated deployment related trauma” and your command made no attempts to get you counseling or treatment, (2) you self-medicated with illicit substances to dull the pain, (3) once your command was made aware of your drug use, a “court-martial” was convened, and you were administratively separated from the Navy with no attempts to address your PTSD that developed as a direct result of your service to your country in wartime, (4) you would not have taken drugs if you did not have those experiences onboard your ship, and (5) the way your behavior was characterized by your command and the “court-martial” made you feel that you were on your own, that you made bad decisions, and you should have rightfully been punished. 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 7 October 2024. The AO stated in pertinent part:

The Petitioner submitted one outpatient mental health record dated August 2023. The record appears to be an initial intake whereby the Petitioner sought services for PTSD. He indicated that he had received treatment previously; however, these records were not submitted. It is unknown as to whether the Petitioner was seeking services for self-diagnosed PTSD, or whether or was properly assessed, evaluated and treated for PTSD prior to the visit dated August 2023.

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. He was diagnosed with an Adjustment Disorder that was related to marital and financial stressors. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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 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 negative impact your conduct likely had on the good order and discipline of your command. The Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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 that your misconduct could be attributed to a mental health condition. As the AO explained, your statement is not sufficiently detailed to provide a nexus with your misconduct and 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. Furthermore, the Board noted that your diagnosis of adjustment disorder was related to marital and financial stressors. 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,

12/20/2024

