



On 31 July 2014 you were convicted at a General Court-Martial (GCM) of the attempted sale of military property, larceny of military property involving the theft of twenty two cellular phones, and five separate specifications of the wrongful sale of military property. You received as punishment, nine months of confinement, a fine, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 12 November 2014 the Convening Authority approved the GCM sentence as adjudged and partially suspended. Upon the completion of appellate review in your case, on 22 July 2015 you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 10 January 2022. The Ph.D. initially observed that you did not provided any clarifying information about the trauma related to your purported PTSD. The Ph.D. determined that misconduct such as the theft and sale of military property was not typical misconduct engaged in by a person suffering from PTSD. The Ph.D. concluded by opining that the preponderance of available objective evidence failed to establish you suffered from a mental health condition on active duty and/or that your active duty misconduct could be mitigated by a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to your contentions that: (a) you are requesting a discharge upgrade in order to be allowed to use the VA healthcare system; (b) you have changed your life tremendously and are not the same man who made those mistakes years ago; (c) you believe you have several medical conditions you obtained on active duty that you would like to address before they get worse; and (d) you have been a fireman in █ since 2016. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your GCM misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your pattern of misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. Moreover, the Board concluded that the specific misconduct you committed involving the theft and sale of military property were not the types of offenses that would be excused by mental health conditions even with liberal consideration. The Board also concluded 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.

Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a GCM of serious misconduct and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances 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,

3/3/2022

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Executive Director

Signed by: █