



and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 5 July 2001 you received non-judicial punishment (NJP) for violation of a lawful order and unauthorized absence (UA). You received the maximum punishment permitted at NJP. You did not appeal your NJP. On 6 July 2001 you received a "Page 11" counseling sheet (Page 11) noting your alcohol-related incident resulting in NJP. The Page 11 warned you that a failure to take corrective action may result in administrative separation and/or judicial proceedings. You did not make a Page 11 rebuttal statement.

On 19 November 2001 you received NJP for two separate specifications of insubordinate conduct and two separate specifications of making a false official statement. You did not appeal your NJP. On 3 January 2002 you received a "Page 11" counseling sheet (Page 11) noting your cumulative misconduct at two separate NJPs. The Page 11 warned you that a failure to take corrective action may result in disciplinary and/or administrative action. You did not make a Page 11 rebuttal statement.

On 2 August 2002 you received NJP for violation of a lawful written order (wearing an earring). You did not appeal your NJP. On 24 January 2003 you received NJP for violation of a lawful written order (wearing a tongue ring). On 24 February 2003 you tested positive for marijuana. On 6 March 2003 your medical screening determined you were not a drug abuser or drug dependent.

On 10 April 2003 you were convicted at a Summary Court-Martial of the wrongful use of a controlled substance. You were sentenced to twenty-five days of confinement.

On 10 April 2003 you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and misconduct due to a pattern of misconduct. You consulted with military counsel and elected to waive your rights to submit a written rebuttal statement and to request an administrative separation board. Ultimately, on 5 August 2003 you were discharged from the Marine Corps for drug abuse with an other than honorable conditions (OTH) characterization of service and assigned an RE-4B 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 noted that your service record did not contain evidence of a mental health condition (MHC) diagnosis or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition, but noted that evidence submitted by you contained evidence of pre-service and post-discharge MHC diagnoses. The Ph.D. determined that your personality disorder diagnosis and various MHC diagnoses made it difficult to differentiate symptoms/behaviors attributable to the personality disorder versus the MHC. The Ph.D. concluded that your misconduct appeared to be more in line with your antisocial personality disorder diagnosis than a MHC. Additionally, the Ph.D. determined that your MHC would not mitigate your potential fraudulent enlistment for your nondisclosure of your ADD/ADHD diagnosis prior to entry into the Marine Corps. The Ph.D.

concluded by opining that although you have post-discharge MHC diagnoses, the preponderance of the available objective evidence failed to establish 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) due to the nature of your mental health issues you did not receive any treatment, (b) Marines are a family and encouraged to take care of one another and that was not the case in your situation, (c) no retest was done upon your request, and (d) you want a change in your discharge so you can get the help you need for your mental health conditions. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, 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 nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. The Board also concluded that although you have a post-discharge MHC diagnoses, your records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, even under the liberal consideration standard the Board concluded that your 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 determined that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. Moreover, the Board concluded that the specific misconduct you committed was not the type of misconduct that would be excused or mitigated 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.

The Board concurred with the AO and noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that your antisocial personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in your misconduct because it did not impair your ability to be accountable for your actions or behaviors. The Board also determined the record clearly reflected that your misconduct was intentional and demonstrated you were unfit for further service.

The Board was aware that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average was 3.6 in conduct. Marine Corps regulations in place at the

time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which justified your OTH characterization of discharge. The Board further 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Lastly, 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. The Board carefully considered any matters submitted regarding your character, post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your pattern of serious misconduct clearly merited your receipt of an OTH.

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,

2/28/2022

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Executive Director  
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