



On 16 January 2008, pursuant to his guilty pleas, your son was convicted at a Special Court-Martial (SPCM) of: (a) two separate specifications of UA lasting sixteen (16) and sixty-four (64) days, respectively, (b) two separate specifications of larceny from fellow service members, (c) housebreaking, and (d) missing his unit's movement. He received as punishment twelve (12) months of confinement, forfeitures of pay, 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 31 March 2008, the Convening Authority approved the SPCM sentence as adjudged but suspended confinement in excess of 180 days.

On 10 June 2008, the Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence. Upon the completion of appellate review in your son's case, on 5 February 2009, your son was 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 8 February 2022. The Ph.D. observed that there was no evidence in your son's service record that he was diagnosed with a mental health condition on active duty. The Ph.D. also determined that it would be speculative to attribute your son's behaviors to a mental health condition particularly because certain offenses such as larceny are not the typical type of misconduct attributable to a mental health condition. The Ph.D. concluded by opining that there was insufficient evidence to establish a nexus between your son's misconduct with any mental health condition, or to determine if a mental health condition mitigated his active duty misconduct.

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: (a) your son was experiencing severe PTSD and was never given follow-up treatment upon his return from his overseas deployment, (b) your son served in █ and █ and earned the good conduct medal, (c) your son spoke to you about Marine Corps hazing and "code reds." 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 your son experienced and their possible adverse impact on your service. However, the Board concluded that there was insufficient evidence that your son 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 his discharge. As a result, the Board concluded that your son's misconduct was not due to mental health-related symptoms. Even if the Board assumed that your son's pattern of misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your son's misconduct was intentional and demonstrated he was unfit for further service. The Board also concluded that the

evidence of record did not demonstrate that your son was not mentally responsible for his conduct or that you should otherwise not be held accountable for his actions.

Moreover, the Board determined that your son, unfortunately, did not earn the Marine Corps Good Conduct Medal (GCM). The Board noted that the GCM requires three years of continuous active duty service without any disciplinary infractions to be eligible. The SPCM conviction effectively restarted the three-year clock on GCM eligibility and your son no longer qualified to receive the award due to his BCD.

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. The Board did not believe that your son's record was otherwise so meritorious as to deserve a discharge upgrade. The simple fact remains is that, in addition to his other charged misconduct, your son left the Marine Corps while he was contractually obligated to serve and went into a UA status on three separate occasions totaling approximately 163 days without any legal justification or excuse. The Board determined that a BCD characterization is generally warranted for serious misconduct and 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 generally will not summarily upgrade a discharge solely for the purpose of facilitating certain VA benefits including burial benefits. 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. Accordingly, the Board determined that there was no impropriety or inequity in your son's discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your son's pattern of serious misconduct clearly merited his receipt of a BCD.

The Board is truly sorry for the tragic and untimely loss of your son. 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,

3/30/2022

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Executive Director  
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