

On 2 April 1998, your command issued you a “Page 11” warning (Page 11) for your lack of bearing, military presence, initiative, judgment, maturity, and military appearance. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or limitation of further service.

On 4 December 2002, you were convicted at a General Court-Martial (GCM) of four separate specifications of conspiracy to commit the larceny of military ammunition, four specifications of the wrongful sale/disposition of military property, and two related specifications of larceny. You were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for sixty-six (66) months, total forfeitures of pay, and a discharge from the Marine Corps with a Dishonorable discharge. On 5 March 2003, the Convening Authority approved the GCM sentence, but suspended the confinement in excess of forty-eight (48) months. On 18 July 2005, the Navy-Marine Corps Court of Criminal Appeals affirmed the GCM findings and sentence. On 23 September 2005, a supplemental GCM order directed a Bad Conduct Discharge (BCD) be executed. Upon the completion of appellate review in your case, on 5 May 2006, 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 13 April 2022. The Ph.D. observed in pertinent part:

Among available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no post-service medical evidence in support of his claims. His personal statement is lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., post-service medical records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another 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: (a) you would like for your record to show you served honorably so you can receive benefits for your current medical and physical issues, and (b) after your GCM you have been a model citizen and active in the community trying to positively influence and change the lives of young men. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 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. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms whatsoever. Moreover, 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 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. Additionally, the Board concluded that the specific misconduct you committed was not the type of misconduct 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 not be held accountable for your actions.

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 certain 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, 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 your statement regarding your post-service conduct and personal/professional 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

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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,

6/10/2022

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