



On 7 March 2006, you received a “Page 13” counseling warning (Page 13) due to the command receiving numerous complaints of your failure to provide adequate support to your dependent. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and processing for administrative separation/discharge.

On 10 April 2007, you submitted a voluntary written request for an administrative discharge in lieu of trial by court-martial for charges that included unauthorized absence, three separate specifications of failing to obey a lawful order, and two separate specifications of larceny from your shipmates. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged if you received an Other Than Honorable conditions (OTH) characterization of service, it may deprive you of virtually all veteran’s benefits based upon your current period of active service, and that you may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing. As a result of this course of action, you were spared the stigma of a court-martial conviction for your multiple offenses, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 30 April 2007, you were separated from the Navy with an OTH discharge characterization and assigned an RE-4 reentry code.

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) at the time of the decisions made for your character of service you didn’t receive proper defense counsel or assistance to protect yourself from the allegations, (b) your date of birth on your DD 214 is incorrect, and (c) after years of misunderstanding you have requested help to right the wrong done to you. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 initial AO dated 16 May 2022. The Ph.D. stated in pertinent part:

Petitioner’s OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Petitioner did not provide clarifying information about his MHC (i.e., diagnosis, symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Additionally, Petitioner’s theft of another’s property is not the typical type of misconduct associated with symptoms of a MHC. No civilian medical/mental health records were provided for review.

The Ph.D. concluded, “[b]ased on the available evidence, it is my clinical opinion Petitioner’s there is insufficient evidence to establish if Petitioner’s MHC can be attributed to military service or if his in-service misconduct can be attributed to a MHC.”

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 of any nexus between any purported mental health conditions and/or their related symptoms and your misconduct, and the Board determined that there was insufficient evidence to support the argument that any such mental health conditions 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 reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined 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 disagreed with your contention that you did not receive proper representation. The Board specifically noted that your discharge in lieu of trial by court-martial request was submitted after you consulted with legal counsel, and that you expressly stated your discharge request was submitted free from any duress or promises of any kind. The Board also noted that the date of birth on your DD Form 214 is the correct date based on your enlistment contract. In making this finding, the Board noted you did not provide any evidence in support of your contentions.

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 active duty service 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 Sailor. Moreover, 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 determined that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that your request does not that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that 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,

7/8/2022

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Executive Director

Signed by: █