



were advised of corrective action regarding your performance and warned that any further deficiencies may result in disciplinary action and in processing for administrative separation. On 20 December 1983, you submitted a written request for separation for separation in lieu of trial (SILT) by court-martial for UA totaling 91 days. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH). The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 30 December 1983, you were discharged from the Marine Corps with an OTH characterization of service by reason of 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 Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that: 1) you incurred post-traumatic stress disorder (PTSD) from racial harassment that incurred during your military service; 2) you were diagnosed with mental health concerns prior to your separation, however, you were discharged unfairly due to racism; 3) you have received mental health treatment for the past thirty years to address the mental health concerns that arose during your military service; 4) you did not receive “quality representation” from your military counsel; 5) your discharge is inequitable and should have been a medical discharge; and 6) your discharge is improper because you were denied proper medical care and treatment by your commanders and unit. 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’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 July 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Although the Petitioner has submitted evidence of a referral to mental health during service, the results of the evaluation are not available. Despite a contention of 30 years of mental health treatment following his separation from service, he has provided no post-service medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms of PTSD or provide a nexus with his misconduct. While UA could be a symptom of PTSD avoidance, there is no information regarding the Petitioner’s life-threatening event or other symptoms consistent with PTSD. Additionally, the mental health referral indicates his symptoms began after his misconduct. It is also difficult to consider how driving infractions would be related to PTSD. Additional records (e.g., post service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

In response to the AO, you provided a rebuttal statement that supplied additional clarification of the circumstances of your case.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and your SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that led to your request for SILT was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment. As a result, the Board concluded you already received significant mitigation from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. Further, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD. While the Board considered your contention concerning mental health treatment post-service, as pointed out in the AO, you have provided no post-service medical evidence to support your claims and your personal statement is not sufficiently detailed to establish clinical symptoms of PTSD or provide a nexus with your misconduct. In addition, the Board noted you did not provide any evidence to substantiate your assertions of inadequate representation or lack of medical treatment. Finally, the Board concluded you were appropriately discharged pursuant to your SILT request and not eligible for a disability related processing due to your misconduct. Based on these factors, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice 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 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,

9/11/2022

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Executive Director

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