



officer who was in the execution of his duties. You were sentenced to confinement at hard labor for 4 months. On 20 December 1978, shortly after you were released from confinement, you received nonjudicial punishment (NJP) for violating UCMJ Article 86, for absence without authority and failing to report for duty. On 4 June 1980, you were again found guilty at NJP, this time for violating Article 91, disobeying a lawful order, after using disrespectful language to a superior.

On 20 August 1980, you were served court-martial charges for violating Article 86 (unauthorized absence - 4 specifications), Article 91 (using disrespectful language toward a Staff Sergeant), and Article 92 (driving an unregistered vehicle on base). In accordance with MARCORSEPMAN, Paragraph 6021, you requested discharge for the good of the service in lieu of trial court martial. After consulting with qualified counsel, you acknowledged your rights and requested discharge from the service with an Other than Honorable (OTH) characterization of service. Ultimately, on 9 September 1980, you were discharged from the Marine Corps for the "Good of the Service" with an "OTH" characterization of service, with the separation code of "KFS1" and assigned an "RE- 4" reenry code.

The Board carefully considered all potentially mitigating and/or extenuating 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 desire to upgrade your discharge characterization and contentions that : (a) the profound adverse impact of your brother's death, (b) that you were young, emotionally hurt, and grieving, (c) that you felt the 24 July 1978 court martial was a "Kangaroo Court," (d) that you have lost post-service employment opportunities, and (e) that you are sorry for your actions. For purposes of clemency consideration, the Board reviewed the numerous character letters that you submitted in support of your request.

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 21 July 2022. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement alone is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 Ph.D. concluded, "it is my considered clinical opinion 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 his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you explained that you do not have insurance, so you are unable to provide documentation in support of your PTSD and MHC claims. However, you asserted that you suffer from anxiety and panic attacks, leading to a state of depression.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and the traumatic event of your brother's death, which may have had an adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or 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 symptoms. In making this finding, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 19 May 2022 to specifically provide additional documentary material. The Board determined the record clearly reflected that your active duty 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 otherwise not be held accountable for your actions. After receiving advice from qualified military counsel, you requested discharge for the good of the service with an OTH characterization, thereby avoiding a possible court martial conviction and a punitive discharge. Your written statement, dated 22 August 1980, which you provided as part of your discharge request, does not mention mental health concerns or the impact of a traumatic or stressful event as the cause of your repeated misconduct. The separation authority granted you clemency by accepting your separation in lieu of trial by court martial.

The Board also observed 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 3.7 in conduct (proper military behavior). 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 further justified your OTH characterization of discharge.

Additionally, 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 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 service member. Lastly, 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 there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your pattern of serious misconduct clearly merited your receipt of an OTH. As a result, the

Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commends your post-discharge good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

10/20/2022

