



officer, and wrongfully communicating the threat, "I will kill you" or words to that effect, to a junior enlisted Marine. In response to administrative counseling warning you that further misconduct could result in administrative or punitive discharge, you submitted a statement of apology for your behavior.

You were subsequently counseled in January 1997 for an alcohol-related incident during which you were operating a motor vehicle while impaired with a blood-alcohol content of .12 while speeding at 91 miles per hour in a 55 mile per hour speed limit zone. In response to this counseling, you submitted a statement acknowledging that your judgment for the past several years had been impaired by alcohol and indicating that you were grateful that the situation had forced you to recognize the problem and stop drinking. An incident on 13 July 1997, however, revealed continued problematic alcohol consumption which led to an additional charge of driving while intoxicated when you were arrested for drag racing as well as resisting arrest.

In light of the end of your enlistment contract approaching, you were placed on legal hold pending the outcome of charges before Special Court-Martial (SPCM). Pursuant to a pre-trial agreement, you pled guilty to charges of: Article 89, disrespect to a superior officer; Article 90, disobedience of orders from a superior officer; Article 92, violating a lawful written order regarding visitors to the Bachelor Enlisted Quarters; Article 95, resisting apprehension; Article 128, 2 specifications of assault upon military police officers in the execution of duty; Article 134, disorderly conduct; Article 111, reckless driving; and, Article 111, driving while impaired by alcohol. Your adjudged sentence, on 9 December 1997, included a Bad Conduct Discharge (BCD), the approval of which was not prohibited under the terms of your pre-trial agreement. Following completion of appellate review of your trial findings and sentence, your BCD was approved and ordered executed on 22 March 1999.

Your initial request for consideration by the Board was previously administrative closed due to lack of records; as such, your current request was considered de novo.

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, your desire to upgrade your discharge and your contentions that you experienced post-traumatic stress disorder (PTSD), from a traumatic event during deployed operations in 1995, which led to self-medication with alcohol and contributed to your subsequent misconduct. You described your alcohol-related misconduct as an isolated incident and allege that you were discouraged from reporting psychological issues due to not wanting to appear weak. Post-discharge, you state that you no longer use alcohol to self-medicate and are otherwise proud of your service as a Marine. In support of your contentions of post-discharge character and clemency, you submitted evidence of having earned a degree in mortuary science which permits you to serve as a licensed mortician and, through your handling of such affairs, to give back to others by ensuring that everyone has the means to care for their loved ones regardless of their financial situation.

Because you contend that PTSD or another mental health (MH) condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. Service records do not provide clear support for his purported

trauma. In contrast, post-service documentation indicated Petitioner was diagnosed with PTSD and MHC (anxiety/depression) attributed to a purported incident in service. While some of Petitioner's misconduct could be indicative of a maladaptive coping skill associated with undiagnosed mental health symptoms, his personal statement and supporting documentation lack sufficient detail to provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. There is no evidence Petitioner was unaware of his misconduct or not responsible for his behavior. Additional records (e.g., post-service mental health records describing the Petitioner's trauma, subsequent in-service symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion, there is post-service evidence of PTSD and MHC (anxiety/depression) that may be attributed to military service. There is insufficient evidence his in-service misconduct could be attributed to PTSD or another MHC."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the unit's mission. Additionally, the Board concurred with the AO that there is insufficient evidence your in-service misconduct could be attributed to PTSD or another MHC. Finally, while the Board observed that your post-discharge evidence reflects positively upon your character, the Board unfortunately found those matters insufficient to outweigh the repetitiveness of your misconduct in conjunction with the scope and seriousness of the offenses to which you pled guilty at SPCM. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. While the Board commends your post-discharge good character and accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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 the 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 is attached 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,

11/7/2022

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Executive Director

Signed by: █