

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your record reveals that your request for separation in lieu of trial by court-martial was approved in March 1995 and you were separated from the Marine Corps with an Other Than Honorable (OTH) characterization of service.

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 and contentions that you incurred a MHC during your military service, you were set up by your by your Gunnery Sergeant, your UA was due to a misunderstanding of the leave policy, and you became depress after receiving a reduction in rank. For purposes of clemency consideration, the Board noted you provided no 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 11 August 2022. The AO stated in pertinent part:

There is no evidence that Petitioner 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement 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 AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.

In response to the AO, you submitted a statement providing additional clarification of the circumstances of your case, your family member's medical history, and information on depression.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your SCM conviction and subsequent request to be discharged for the GOS, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that your conduct showed a complete disregard for military authority and regulations. In addition, the Board concurred with the findings of the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board also noted that there is no evidence in your record, and you submitted none, to support your contentions. Finally, the Board considered that you already received a large measure of clemency and mitigation of your misconduct when the Marine Corps agreed to discharge you for

the GOS; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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. 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 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,

9/29/2022

█
Executive Director

Signed by: █