



daily muster report. You did not appeal your NJP. On 6 March 1978, you reenlisted for four years.

On 4 March 1980, you received non-judicial punishment (NJP) for both unauthorized absence (UA) lasting seven days, and for missing ship's movement while in a UA status. You did not appeal your NJP. On 27 April 1980, you received NJP for UA lasting two days. You did not appeal your NJP.

On 4 December 1980, you commenced a period of UA. On 3 January 1981, your command declared you to be a deserter. Your UA terminated after 130 days, on 13 April 1981, with your arrest by military authorities.

On 11 May 1981, you were convicted at a Summary Court-Martial of your 130-day UA, and for missing restricted muster four separate times. You were sentenced to confinement at hard labor for thirty days, a reduction in rank to E-3, and forfeitures of pay. The Convening Authority (CA) approved the sentence as adjudged.

On 15 June 1981, you commenced a period of UA. Your UA terminated after one day, on 16 June 1981. On 19 June 1981, you commenced another UA that terminated after three days, on 22 June 1981. On 23 June 1981, you commenced another UA that terminated after twenty-three days, on 16 July 1981. On 17 July 1981, you commenced another UA that terminated after twenty-six days, on 12 August 1981. On 13 August 1981, you commenced another UA that terminated after twenty-two days, on 4 September 1981. On 8 September 1981, you commenced another UA that terminated after thirty days, on 8 October 1981.

On 9 October 1981, you commenced yet another UA. On 19 October 1981, your command declared you to be a deserter. Your UA terminated after 121 days, on 17 February 1982.

On 13 April 1982, you were convicted at a Special Court-Martial (SPCM) of seven separate UA specifications totaling 226 days, and for breaking restriction. You received as punishment confinement at hard labor for seventy-five days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the naval service with a Bad Conduct Discharge (BCD). In the interim, your separation physical examination, on 15 April 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You expressly answered "no" to ever having frequent trouble sleeping, and stated you were in good health and taking no medications. On 3 June 1982, the CA approved the SPCM sentence as adjudged, but suspended confinement in excess of ten days. Upon the completion of appellate review in your case, on 18 May 1983, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

On 30 September 2004, this Board denied your initial petition for relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie

Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) stress caused you to engage in self-destructive behaviors, and (b) stress from the job caused you to lose sleep and post-service you discovered it was sleep apnea. For purposes of clemency and equity 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 AO dated 19 September 2022. The Ph.D. stated 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 in support of his claims. His evidence of sleep apnea diagnosis is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, as it is difficult to attribute repeated, extended UA to stress or sleep troubles that were denied during military service. 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 mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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 you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were 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 conditions or symptoms. 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 16 June 2022 to specifically provide additional documentary material. The Board unequivocally determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. The Board also concluded 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.

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. Additionally, 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. Accordingly, 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 serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. The simple fact remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status multiple times without any legal justification or excuse. Accordingly, the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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 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,

11/9/2022

