

On 8 May 1987, you were evaluated and diagnosed with right knee posterior cruciate ligament reconstruction, sciatic nerve palsy, and stiffness of the knee due to prolonged immobilization. The record shows that, on 1 June 1987, you commenced a period of UA that subsequently concluded upon your apprehension by civilian authorities and return to military authorities on 30 December 1987; a period totaling 212 days. 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.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 4 March 1988, you were discharged from the Marine Corps with an OTH characterization of service by reason of “Separation In Lieu of Trial by Court-martial.”

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 and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contention that you incurred depression following learning that your mobility would be permanently impaired after a knee injury, which contributed to your misconduct. You assert that you were told that you would walk with a permanent limp and have problems with your injury for the rest of your life, after hearing the news of your injury you fell into a deep depression and did not know what the future held for you, you went home on leave and continued to be depressed due to family concerns, you made a choice while still depressed you would accept being discharged, and because of your depression you stayed home beyond your approved leave date. 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’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 7 September 2022. The AO 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. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Although the record supports his claim that he was experiencing significant medical difficulties with his right knee, there is the stress that he incurred resulted in a mental health condition. 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 experienced during military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough 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 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 SILT request was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Marine Corps agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition experienced during military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board concluded you were appropriately discharged pursuant to your SILT request due to your misconduct. The Board noted you provided no evidence to substantiate your contentions. 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. 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 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,

11/21/2022

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Executive Director
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