



11 December 1975. You were declared a deserter on 16 June 1975. Upon your return to duty, you were served with Special Court Martial (SPCM) charges for violations of UCMJ Article 86, for four specifications of UA to include the period of desertion, Article 91, for failure to obey a lawful order, Article 121, for wrongful appropriation, and Article 134, communicating a threat. After reviewing the charges, you spoke with a Chaplain about your request for an Undesirable Discharge in lieu of court martial. The Chaplain's letter states, "[h]e admits the Navy gave him just what he wanted and looked out for his best interest but it just wasn't exactly what he was looking for." On 29 January 1976, your request for an Undesirable Discharge in lieu of court martial was accepted by the separation authority and, on 6 February 1976, you were discharged from the naval service with an Other than Honorable (OTH) characterization and RE-4 reenlistment code.

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 character of service and your contention that you experienced a traumatic event while stationed in GTMO, which contributed to your misconduct. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation from your record and a character letter.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO, which was provided to you on 28 September 2022. The AO noted 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. Unfortunately his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, as the nature of some of his misconduct, e.g., stealing and threatening a NCO are not necessarily congruent with his post-service diagnosed depression and/or anxiety. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Additional records (specifically from his time in █) 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 that his misconduct could be attributed to a mental health condition."

In response to the AO, you submitted a statement that provided additional information regarding the circumstances of your case.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by two NJPs and request to be discharge in lieu of court-martial, outweighed these

mitigating factors. The Board considered the seriousness of your misconduct and the fact it involved desertion from the service. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Navy core values and policy and has a substantial negative impact on the mission readiness of a vessel. In making its determination, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a mental health condition. The Board highlighted that you knowingly requested an Undesirable Discharge in lieu of court martial, thereby avoiding a court martial conviction and punitive discharge. The separation authority granted you clemency by accepting your discharge in instead of holding you accountable at court martial. Further, your discharge request does not mention mental health concerns or the impact of a traumatic or stressful event as the cause of your misconduct. There is nothing in your service records that support your contention that a traumatic event occurred while you were stationed in GTMO, nor did you provide proof of such occurrence, outside of providing a personal statement. On the contrary, the Board determined that 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and good character, 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,

12/14/2022

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