

conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the offenses and acknowledged that your characterization of service upon discharge would be under Other Than Honorable (OTH) conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 21 October 1987, you were discharged from the Marine Corps with an OTH characterization of service by reason of separation in lieu of trial by court-martial.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 1 December 1997, based on their determination that your discharge was proper as issued.

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 change your discharge character of service and contentions that you were under the care of a psychologist do to mental issues related to the training and fear tactics of your superiors, no matter what you did, you were physically abused, picked on by other Marine and superiors until you started to fight back, and you gave your all to try to be at least good enough to fight for your country. 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 2 December 2022. The AO noted in pertinent part:

There is no evidence that the 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 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 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 Convening Authority 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 that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, 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. 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. While the Board commends your post-discharge 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 granting you the relief you requested or granting relief 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,

2/2/2023

■
Executive Director
■