



On 31 October 2006, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense. You waived your right to consult with qualified counsel and to present your case at an administrative separation board. Ultimately, on 22 November 2006, you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments of character letters. The Board did note that your requests states that you graduated law school and need to upgrade to submit to the board of bar examiners.

In your petition, you contend that you were suffering from undiagnosed PTSD from childhood trauma, as well as other mental health concerns during military service, which might have mitigated your discharge character of service. You explain that your PTSD & Bipolar disorder caused instability, which effected your ability to respond steadily under repeated high stress. 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 1 November 2022. The Ph.D. 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. 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., 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your significant period of UA and NJP, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about your mental health concerns and the possible adverse impact on your service. The Board considered the seriousness of your misconduct and the fact that you went UA almost immediately after joining 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 your misconduct was contrary to Marine Corps values and policy and likely had a detrimental impact on mission accomplishment. In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 25 August 2022 to specifically provide additional medical documentation. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found 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 Marine and continues to warrant an OTH characterization.

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. 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

1/30/2023

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Executive Director

Signed by: █