



On 27 June 1987, your command issued you a “Page 11” counseling warning (Page 11) for possessing an illegal weapon (butterfly knife). The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 12 November 1987, your command issued you a Page 11 for possessing alcohol in the barracks. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 11 December 1987, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 13 January 1988, you received NJP for UA that lasted eleven (11) days. You did not appeal your NJP.

On 22 February 1988, you received NJP for failing to obey a lawful order for driving on base with a suspended license. You did not appeal your NJP. On 26 February 1988, your command issued you a Page 11 documenting your failure to abide by base driving regulations, alcohol abuse, and repeated UA offenses. The Page 11 expressly advised you that any further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or processing for administrative discharge. You did not submit a Page 11 rebuttal statement.

On or about 23 April 1988, you began Level III alcohol rehabilitation treatment at █. █. On or about 22 June 1988, you were discharged from the hospital upon completion of the inpatient treatment. On 26 June 1988, you suffered severe injuries when you fell approximately thirty feet onto some rocks while climbing a cliff. On 5 July 1988, you were discharged from the hospital.

On 26 September 1988, you commenced a UA that terminated after twenty-six (26) days on 22 October 1988. You received NJP, in November 1988, for your long-term UA. The reason you provided to your chain of command for your UA involved a purported domestic incident between your girlfriend and her ex-boyfriend. When your chain of command inquired as to why you took so long, you stated words to the effect that if you stayed away long enough your command would recommend you for a discharge.

On 13 January 1989, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your right to consult with counsel, to submit written rebuttal statements, and to request a hearing before an administrative separation board. In the interim, you separation physical examination, on 22 February 1989, found you physically qualified for separation and did not note any psychiatric or neurologic issues. You expressly stated on your self-reported medical history: “I am in good health and not presently taking any medications.” Ultimately, on 22 February 1989, you were discharged from the Marine Corps for a pattern of misconduct with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

In May 1991, the Naval Discharge Review Board denied your initial application for a discharge upgrade.

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 for a discharge upgrade and contentions that: (a) you were suffering from alcoholism on active duty and did inpatient treatment, (b) immediately after finishing rehab you fell thirty feet off of a cliff, (c) you were severely injured and should have been medically discharged, (d) you were not facing a discharge after your injury, (e) you walked off the base in a body cast and should have been allowed time to heal, (f) you have been sober for twenty years and turned your life around, and (g) you believe that if you were given the chance and not been injured you would have retired from the Marine Corps. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

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 9 November 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred and properly treated for an alcohol use disorder during military service. Problematic alcohol use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his actions. The evidence indicates that problematic alcohol use begun prior to entry into military service continued during military service, before and after his back injury. There is no evidence of another mental health condition. Available records are insufficiently detailed to establish clinical symptoms of another mental health condition during military service or a nexus with his misconduct, particularly given his statements in service regarding his UA. 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."

In response to the AO, you provided additional documentation related to your case including medical documentation and congressional correspondence.

After thorough 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 there was absolutely no nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions 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, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your pattern of misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board determined your argument that you should have been medically discharged was not persuasive and without merit. First, the Board noted that administrative separations for misconduct that result in an OTH take absolute precedence over medical-related discharges. Even if you were currently undergoing the appropriate medical board/physical evaluation board evaluations at the time, an administrative separation for misconduct would govern your ultimate separation. Second, the Board noted the glaring discrepancy between your contention that you should have been medically discharged and walked off the base in a body cast, with your statement you provided at your separation physical that you were in good health and not presently taking any medications.

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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, 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, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH. The Board carefully considered any matters submitted in support of your application, 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

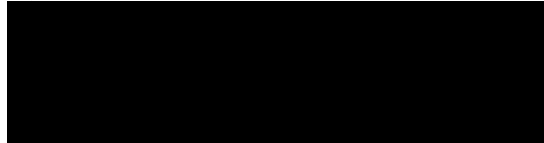


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applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/6/2023



Executive Director

Signed by:

