



fourth NJP for violating UCMJ Article 91, for two specification of failure to obey lawful order. You did not appeal these NJPs.

On 7 October 1982, you received a separation physical wherein you reported to be in good health and did not disclose any mental health symptoms. On 15 October 1982, you were discharged under the Marine Corps Expeditious Discharge Program per MARCORPSEPMAN 6012.5 with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-3C 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 mental health issues during service, and (c) the impact of those mental health issues on your conduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your petition, you contend that you deserve an upgrade “because of the PTSD I suffered while serving on active duty.” 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 19 December 2022. The Ph.D. noted in pertinent part:

The Petitioner submitted VA disability letter indicating 100% service connection for “PTSD with unspecified bipolar and related use disorder and cannabis use disorder secondary to personal trauma.” 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 as the VA disability letter does not mention the etiology or circumstances of his rating or diagnosis. 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 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 that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions regarding mental health. Specifically, the Board felt that your misconduct, as evidenced by your four NJPs, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct during a single year of 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 Marine Corps values and policy, renders such Marine unfit for duty, and places an unnecessary burden on fellow servicemembers.



In making this determination, the Board concurred with the advisory opinion that there was insufficient 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 considered the Department of Veterans Affairs (VA) disability letter indicating 100% service connection for “PTSD with unspecified bipolar and related use disorder and cannabis use disorder secondary to personal trauma.” However, the Board felt that the VA disability letter is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct, as it does not mention the etiology or circumstances of your rating or diagnosis. Throughout your disciplinary processing, you never raised concerns of a mental health condition or mental health symptoms that would have warranted a referral for evaluation. Further, you did not appeal any of your four NJPs. 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 concluded that significant negative aspects of your conduct outweighed the positive aspects, and therefore a GEN characterization continues to be appropriate in your case.

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. Therefore, 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 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,

3/2/2023

