

driver's license; Article 91, for disrespectful language and deportment to a female corporal, Article 91, for unlawfully striking a female corporal in the execution of her office and then raising a wrench while stating you ought to hit her with it; Article 91, for being disrespectful to a corporal by belligerent and unruly behavior; Article 92, for disobeying a lawful order to report to the Adjutant's office; Article 134, for drinking alcohol while serving as the duty driver; and, Article 128 for striking a lance corporal in the face with your fist.

Subsequently, and after having received formal administrative counseling warning you in regard to your frequent violations of the Uniform Code of Military Justice (UCMJ), you deployed from 28 August 1990 until 28 March 1991, first in support of Operation DESERT SHIELD, then in support of Operation DESERT STORM, to include service in Kuwait during which you were awarded a Combat Action Ribbon, National Defense Service Medal, Southwest Asia Service Medal, and Kuwait Liberation Medal, which are documented in block 13 of your Certificate of Discharge or Release from Active Duty (DD Form 214). After returning from deployment, you were advised that you were not recommended for promotion due to your "less than desirable" performance and conduct in recent months. In November of 1991, you were accused of participating in the alleged "gang rape" of a female Marine. In February 1992, you were tried before Special Court-Martial (SPCM) and convicted for the following UCMJ violations: Article 80, for wrongfully attempting to commit adultery; Article 81, for conspiring with three other Marines to make false official statements; Article 134, for wrongfully attempting to engage in indecent acts; and, Article 134, for wrongfully making a false statement under oath. Your sentence included reduction to the lowest grade of E-1, 105 days of confinement, and forfeitures of pay. Following the conclusion of your trial proceedings, you were notified of processing for administrative separation by reasons of misconduct due to pattern of misconduct. After consultation with counsel, you elected to waive your right to a hearing or to submit a statement on your behalf. Your separation under Other Than Honorable (OTH) conditions was approved and you were discharged on 18 April 1992.

You have previously applied to the Board on four occasions and did not received relief. Initially, you submitted a personal statement in which you contended primarily that youth and immaturity contributed to your misconduct. Subsequently, you supplemented your personal statement to include allegations that racism, maltreatment, abuse of power, and a mental health condition (specifically, paranoid schizophrenia), contributed to your misconduct. Your most recent application for reconsideration was denied on 2 October 2019, as it did not provide new and material evidence for consideration; however, as of 31 August 2022, the Department of Veteran Affairs (VA) has granted you service-connected disability due to post-traumatic stress disorder (PTSD), for treatment purposes.

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 and to confirm your entitlement to awards incident to your combat service, for which you state that you never received or were issued the Kuwait Liberation Medal, as well as your contentions that you are unable to enroll for VA treatment due to the character of your discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO in addition to your medical evidence. The AO stated in pertinent part:

The Petitioner contends that he suffered from undiagnosed PTSD and mental health issues as a result of his deployment. He submitted VA Disability Rating letter dated August 2022 which indicates service connection for PTSD with Alcohol and Cannabis Use Disorder. He also submitted a letter from Dr. Perris Monroe dated October 25, 2022 which indicates a diagnosis of PTSD due to service in the Gulf War. There is evidence that he was diagnosed with a mental health condition in military service, however it appears as though his diagnosis of depression was a result of his pending disciplinary and legal difficulties as well as problems with his fiancée, and were thus situationally temporary. There is no evidence that he suffered from PTSD symptoms while in service, and his post-service diagnosis of PTSD is temporally remote to his misconduct. Additionally, the Petitioner's misconduct began occurring before his deployment, thus it is not possible to state that all of his misconduct was as a result of his deployment.

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 provided a previously submitted letter from your civilian provider.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. In particular, the Board noted your five NJPs for numerous serious offenses, to include assault, occurred *prior* to your deployment. In addition, the Board considered that your attempted assault and dereliction of duty while standing watch occurred *prior* to the purported trauma of the motor vehicle accident in which you were injured. Further, with respect to the post-deployment offenses substantiated by your SPCM conviction, the Board applied the guidance in the above-referenced memoranda, which reiterates that premeditated offenses, such as conspiracy and false official statements, are not the sort of misconduct which would normally be excused by PTSD or another mental health condition. To this extent, the Board found that your PTSD, even if experienced during your military service, would not have excused the serious offense for which you were convicted by SPCM. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, 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.

To the extent that your correspondence reflects a desire to confirm the contents of your OMPF, information provided by the National Personnel Records Center may assist you in requesting a copy. You may find further information at <https://www.archives.gov/personnel-records-center/military-personnel/ompf-archival-requests>.

Additionally, the Board notes that you do not appear to have exhausted administrative remedies with respect to your contention that you either have not been issued awards to which you are entitled or that you are entitled to awards not documented in your OMPF. If you believe that your record is missing specific awards to which you may be entitled, or if you believe that you have not been issued specific awards for which your record already reflects your entitlement, you may find information for submitting such request to the Marine Corps Awards Board at: https://www.secnav.navy.mil/mra/bcncr/Pages/list_of_contacts.aspx.

Finally, with regard to your specific contention of needing your discharge upgraded in order to qualify for treatment of your PTSD and/or other service-incurred mental health disabilities, the Board notes that the VA's rating decision approved your service-connected disability "for treatment purposes." If you desire to confirm your mental health benefits or seek further services from the VA, <https://www.mentalhealth.va.gov/get-help/index.asp> may be of assistance.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

2/9/2023

