

authorities for “larceny in a building.” On 28 September 1981 you were convicted on that charge and sentenced to 25 days of confinement.

On 5 November 1981, you were served with a Special Court Martial (SPCM) charge sheet for violation of Uniform Code of Military Justice (UCMJ) Article 86, for your period of UA from 4 January 1981 to 16 September 1981. On 1 December 1981, you requested “Administrative Discharge for the Good of the Service to Avoid Trial by Court Martial.” The Commanding General positively endorsed your request and on 28 December 1981, you were discharged from the service “Under Conditions Other than Honorable” (OTH) “to escape trial by court-martial” and assigned a RE-4 reenlistment code.

In your petition, you contend that you incurred mental health concerns during military service due to the death of your child, which mitigated the circumstances surrounding your misconduct. 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 3 January 2023 as part of your petition. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition during military service. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his statements in service regarding his reason for UA and his civilian conviction while UA. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health diagnosis that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.”

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 incurred mental health concerns due to the death of your child, and (c) the impact that your mental health had on your conduct while in service. For purposes of clemency consideration, the Board noted that you did not provide any evidence of post-service accomplishments or character letters.

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. 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 unauthorized absence and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct, and the fact that it involved the commission of an offense while in a UA status. 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 this type of misconduct is contrary to Marine Corps values and policy, renders such Marine unable to perform their duty, and poses a risk to the civilian community.

In making this determination, the Board concurred with the advisory opinion that there was no 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. You have not provided any medical evidence in support of your claims. Further, the Board relied heavily on your separation request dated 1 December 1981 in which you state “The Marine Corps and me just don’t see eye to eye...” and “My ways of life are a lot different...” The Board felt that you did not accept responsibility for your actions and continue to show a lack of remorse for your misconduct. At no time does your request discuss the death of a child or any mental health symptoms from which you were suffering. The Board concluded 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. The Board felt that you were already granted clemency in the acceptance of your administrative discharge in lieu of trial by court martial. After applying liberal consideration, even in light of the Wilkie Memo, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization.

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,

3/3/2023

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Executive Director

Signed by: █