



You enlisted in the Marine Corps and began a period of active duty on 30 September 1976. On 13 July 1977 and 8 December 1977, you received non-judicial punishment (NJP) for willful disobedience of a lawful order from a superior commissioned officer and unauthorized absence (UA) for a period totaling five days. During the period from 22 May 1978 to 29 November 1978, you received five instances of NJP for two periods of UA totaling six days, wrongful possession of two armed forces identification cards, disrespect in language and deportment towards a senior noncommissioned officer, failure to obey a lawful order from a senior noncommissioned officer, willfully disobeying an order, and two specifications of absence from your appointed place of duty.

On 8 February 1979, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. On 29 March 1979, you were issued an administrative remarks (Page 11) counseling regarding your frequent involvement with military authorities and your lack of maturity and poor performance as a Marine. On 25 May 1979, you received your eighth NJP for failure to go at the time prescribed to your appointed place of duty. On 3 October 1979, you were advised of your procedural rights and waived them. Your commanding officer (CO) recommended your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps. On 2 November 1979, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

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 change your discharge character of service and contentions that you were never able to receive treatment for your TBI, you coped poorly with your mental health condition and have self-medicated through substance abuse, the Department of Veterans Affairs (VA) has determined a service connection for TBI for your period of service, and you are unable to receive care or submit a claim for VA disability benefits because of the type of discharge you received. For purposes of clemency and equity consideration, the Board noted you provided evidence from the Department of Veterans Affairs and an advocacy letter, but no documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 22 February 2023. The AO noted in pertinent part:

There is evidence in the Petitioner's service record of two head injuries incurred in 1978. Although there is insufficient evidence of residual symptoms to indicate TBI during military service, post-service the VA has determined service connection for TBI. Unfortunately, available records are insufficient to establish a nexus with his misconduct, particularly given a pattern of behavior established pre-service that appears to have continued during service. Additional records (e.g., complete VA mental health records, including the Compensation and Pension exam, describing

the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is post-service evidence from the VA of TBI that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your eight NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO that while there is post-service evidence from the VA of TBI that may be attributed to military service, there is insufficient evidence your misconduct could be attributed to TBI. As the AO noted, the available records are insufficient to establish a nexus with your misconduct. Finally, the Board 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 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 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,

4/26/2023

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Deputy Director

Signed by: ■