



code of military justice), or to have any involvement of a discreditable nature and failure to take corrective action may result in administrative separation, judicial proceedings, or limitation on further service.

On 7 March 2005, you received a second NJP for failing to obey a lawful order by wrongfully consuming alcohol while on Battalion restriction and for two (2) specifications of failing to report to the Battalion Officer of the Day. Subsequently, you refused evaluation for a potential alcohol use disorder. As a result, on 9 March 2005, you were notified of your pending administrative separation by reason of pattern of misconduct (POM), at which time you waived your right to consult with military counsel and have your case heard before an administrative discharge board. The same day, your Commanding Officer (CO) also recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service by reason of POM. The CO noted that you endangered the life of 400 Marines when you consumed alcohol while on watch, during which the camp came under attack from Iraqi insurgents. On 25 April 2005, a staff judge advocate's review of your case found the proceedings were sufficient in law and fact. On 28 April 2005, the separation authority directed you be discharged with an OTH for POM. On 20 May 2005, you were so discharged.

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 your contentions that you incurred PTSD, traumatic brain injury (TBI), and mental health concerns (MHC) during military service and you would like to upgrade your discharge to receive Department of Veterans Affairs (VA) benefits and treatment. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD, TBI and other MHC during military service, which might have mitigated the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence of a Traumatic Brain Injury (TBI) incurred in service and the Petitioner has provided no medical evidence to support his claims. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no evidence of his mental health claims. Unfortunately, the Petitioner's personal statement is not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of TBI incurred during military service. There is insufficient evidence of a diagnosis of PTSD or

[REDACTED]

another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI, PTSD, or another mental health condition.”

After a thorough review, the Board concluded your 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. The Board noted the egregious nature of your misconduct that placed the lives of hundreds of Marines at risk. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD, TBI or another MHC. Finally, 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. 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. Even in light of the Wilke 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 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,

5/9/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]