



acting out.” Over the course of 1989, you were formally counseled on numerous occasions for poor motivation, lack of integrity, and revocation of on-base driving privileges.

On 10 December 1990, you were convicted at General Court Martial (GCM) of violating Uniform Code of Military Justice (UCMJ) Article 129, for unlawful entry, and Article 134, for indecent assault, making a false statement, and making a false statement under oath. You were sentenced to eight months of confinement, reduction in rank to E-2, and forfeitures of pay. During your physical examination upon entry into confinement, you denied mental health symptoms, such as trouble sleeping, depression or excessive worry, or nervous trouble of any sort.

On 5 July 1991, you were notified that you were being processed for an administrative discharge by reason of misconduct, due to your pattern of misconduct. After speaking with qualified counsel, you waived your right to present your case at an administrative separation board. During your separation physical, on 20 August 1991, you denied any mental health concerns or symptoms. On 9 October 1991, you were discharged from the Marine Corps with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 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 suffering from mental health issues during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred mental health concerns during military service, which drove you to commit misconduct and ultimately resulted in your separation from service. You explain that the Marine Corps knew of your mental health diagnosis but never referred you to treatment and never allowed you to seek assistance. 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 29 September 2023. The Ph.D. noted in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder, based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. The Petitioner has provided no medical evidence of another mental health condition. His in-service misconduct appears to be characterological, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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 clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than his diagnosed personality disorder.”

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 about mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJP and GCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved entering the dwelling of another with the intent to commit indecent assault. 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 is contrary to Marine Corps values and policy and poses an unnecessary risk to the safety of fellow Marines.

In making this determination, the Board concurred with the advisory opinion that there was no convincing 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. Your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. By definition, personality disorders are characterological and are pre-existing to military service. Further, you did not provide any post-service medical documents in support of your contention about a mental health diagnosis and your personal statement fails to draw sufficient nexus to the underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms, rather. The Board determined the record clearly reflected 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. You were provided the assistance of qualified counsel throughout the disciplinary process and you never raised any issues concerning your mental health during this process.

As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and 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.

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,

11/30/2023

