

On 1 November 1983, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for failure to go to your appointed place of duty. On 24 August 1984, you received your second NJP for violating UCMJ Article 92, for dereliction in the performance of duty. On 11 January 1985, you received your third NJP for violating UCMJ Article 92, for making unauthorized long distance phone calls. You did not appeal these NJPs.

On 15 January 1985, you were notified that you were being processed for administrative discharge with an Other Than Honorable (OTH) characterization of service due to your minor disciplinary infractions. You elected your right to consult with qualified counsel and your right to present your case at an administrative separation board. However, on 17 January 1985, after having consulted with counsel and being advised of your rights, you elected to waive your administrative discharge board on the conditional that the command issue you a General (Under Honorable Service) (GEN) characterization of service instead of an OTH. On 24 January 1985, your Commanding Officer recommended the approval of your conditional waiver for GEN discharge. In his recommendation, he noted that your "...record of service depicts...poor performing Marine....numerous counseling entries concerning negligent issuance of Military Identification Cards, returning from leave late, revocation of check cashing privileges, driving while intoxicated, poor job performance, and not being recommended for promotion or reenlistment... three non-judicial punishments...[in the] past fourteen months.... [Petitioner's] extreme immaturity and documented disdain for military regulations and discipline have a demoralizing effect upon all Marines around him....further counseling is to no avail and a waste of time and energy...."

Prior to your separation, you received a separation physical in which you denied any mental health symptoms or concerns. On 20 February 1985, the Separation Authority accepted your conditional waiver and directed your separation by reason of "Misconduct- minor disciplinary infractions" with a GEN characterization of service and assigned a RE-4 reentry code.

You previously submitted an application to the Naval Discharge Review Board (NDRB) and were denied relief on 5 August 1989 and 2 March 1990.

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 assertion that you were struggling with undiagnosed mental health conditions 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 you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) following the █ bombing, related to your efforts assisting fellow Marines in receiving care in the aftermath of the attack. You assert that you were under extreme stress and suffered from anxiety during this timeframe. In support of your request, you provided a Department of Veterans Affairs disability rating of 30% for service-connected PTSD. 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 25 October 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given the nature of 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 Ph.D. concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

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 undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and administrative counseling warnings, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy and places an unnecessary burden on fellow service members.

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. The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. The Board highlighted that you failed to mention any such concerns during your separation physical. The Board also highlighted that you requested discharge in exchange for a GEN characterization of service after receiving advice from counsel. The Board felt that your post-service diagnosis from the VA is temporally remote to your service and fails to draw a sufficient nexus to your underlying misconduct. Further, the Board noted that you did not raise any claims of mental health concerns during your previous requests for relief at NDRB. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found 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.

While the Board carefully considered the evidence you submitted in mitigation, 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,

12/6/2023

