

military establishment. I am a physician and as such my primary goal is to tend to the well-being of my patients as best I am able. However, the goals of the military place secondary emphasis on patient care. I am not motivated toward military service and its requirements or regulations. My continued service in the military is detrimental to the organization inasmuch as I cannot conform to standards. Additionally, I feel that my continued service is detrimental to my psychological well-being, as well as to my professional growth.

On 19 February 1976, the Chief, Bureau of Medicine and Surgery provided a negative endorsement on your resignation request and noted you were obligated to serve on active duty until 7 July 1978 for having completed a three-year residency program. On 8 March 1976, the Chief of Naval Personnel (CNP) disapproved your request due to your required active obligated service remained until 7 July 1978.

Your command received a report from the CNP, dated 18 May 1977, on behalf of the Secretary of the Navy (SECNAV). This was soon followed by another letter from the Bureau of Naval Personnel (BUPERS), dated 27 May 1977, on behalf of the Chief of Legislative Affairs for Senator ██████████. These letters included copies of the envelopes you sent to your wife, and the note written to your estranged wife. Your command counselled you relative to the complaints. Soon thereafter, you admitted to a Postal Inspector (PI) that the letters originated from you. The PI referred the letters to the U.S. Attorney's Office in ██████████, ██████████, however, the U.S. Attorney referred the matter back to your command for resolution. Your command also received a phone call from a husband who complained of your involvement with his wife. During the course of the command investigation into your adultery, and after being advised of your rights, you freely admitted your involvement, and explained that the woman had brought her children to you for treatment in the past, and that she worked for a friend of yours. You claimed to have tried ending the affair at some point, but that the woman would not leave you alone, and that this resulted in the husband's official complaint to the command.

Your command charged you with conduct unbecoming an officer and gentleman related to your adulterous relationship with the wife of an enlisted man,¹ and two separate specifications of mailing letters to your spouse containing libelous and obscene matters that brought discredit upon the naval service.

On 29 June 1977, you received non-judicial punishment (NJP) for your charged offenses. At the NJP hearing, you did not present any evidence on your behalf. You were found guilty at NJP of adultery and of two separate specifications of certain conduct unbecoming an officer that was service discrediting and/or prejudicial to good order and discipline. You were awarded a punitive letter of reprimand (PLR), and you received the PLR on 30 June 1977.

On 11 July 1977, you appealed both your NJP and PLR. You argued, in part, that the military tribunal was without jurisdiction to hear this matter, the offenses were not service-connected, and

¹ This woman ██████████ patients.

that charged misconduct did not constitute a disorder or neglect to the prejudice of good order and discipline.

On 25 July 1977, the General Court-Martial Convening Authority (Commandant, Sixth Naval District) (GCMCA) denied your appeals. The GCMCA determined that the “service-connected” test you cited from the O’Callahan case need not be applied to non-criminal, administrative NJP proceedings. The GCMCA specifically noted the service-connected test was formulated to protect an accused’s right to trial by jury and did not apply to minor offenses with punishments less than six months. Notwithstanding, the GCMCA still concluded your offenses met the service-connection test. The GCMCA also ruled that having decided your conduct was clearly service discrediting, that it was unnecessary to decide whether your conduct was prejudicial to good order and discipline.

In the command’s Report of Disciplinary Action (NJP Report), dated 28 July 1977, your command recommended to the CNP that you be separated from the U.S. Navy. Your commanding officer in the NJP Report stated:

...it is highly recommended that █ be separated from the Naval Service. Although a shortage of pediatricians exists throughout Navy medicine, it is considered that continuation of █ in an active duty status is deleterious to the morale of other members of this Command. His professional competence is not in question, however, his lack of self-discipline coupled with his personal moral standards are considered out of consonance with an officer of the United States Navy.

You declined to submit comments on the NJP Report.

The NWC President also recommended that you be detached for cause and reassigned as a result of your NWC disenrollment. On 19 August 1977, the GCMCA also recommended to the CNP that you be discharged.

On 22 August 1977, you again submitted the same resignation request from 19 January 1976. On 9 September 1977, the GCMCA recommended disapproval of your request.

On or about 11 September 1977, CNP initiated administrative separation action requiring you to show cause for retention based on your documented misconduct. CNP determined that, by your misconduct, you have compromised your status as a commissioned officer, and that your actions raised serious doubts as to your suitability for continued naval service. CNP directed that the GCMCA convene a board of officers (BOO) to consider your retention in, or separation from, the U.S. Naval Reserve. The SCA notification advised you that as a BOO alternative, you could, *inter alia*, submit a voluntary qualified resignation request for a General (Under Honorable Conditions) (GEN) characterization of service in lieu of separation processing. On 5 October 1977 you elected not to submit a qualified resignation, and you expressly elected you would not appear before the BOO.

On 2 November 1977, a BOO convened in your case. You did not appear in person before the BOO, but you were represented by qualified military counsel at the hearing. Following the presentation of evidence and witness testimony, the BOO members unanimously determined, by a preponderance of the evidence, that you committed certain misconduct as charged, and that your performance as a naval medical officer was compromised by your activities constituting moral and professional dereliction. The BOO members unanimously recommended that you be separated from the naval service with an under Other Than Honorable conditions (OTH) characterization of service.

In January 1978, in its recommendation to SECNAV, CNP concurred with the BOO findings, opinions, and recommendations. CNP recommended to the SECNAV that you be separated from the U.S. Naval Reserve with an OTH characterization of service. On 5 January 1978, SECNAV approved CNP's recommendation. Ultimately, on 6 January 1978, you were discharged from the U.S. Navy Reserve for misconduct with an OTH characterization of service at the rank/grade of O-4.

On 3 January 2022, the Board denied your previous petition for discharge upgrade relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) the initial NJP query was a mistake of fact, erroneous, and unlawful, (b) the purported adulterous affair is hearsay only, unspecified and undocumented, and therefore does not meet Court Martial Manual (CMM) requirements to support this charge, (c) there was never any documentation or testimony to the facts by any of the parties involved. Neither she nor the "husband" gave testimony at NJP. In the case of NJP's charge of an adulterous affair, there is no objective documentation of such an affair. There was no "adulterous affair," and the accusation is based on hearsay only, not on facts. This accusation falls into the realm of "mistake of fact," to put it nicely. The charge of "adulterous affair" is vague and is not based on objective facts. The charge is unjust, unfair, and irresponsible, (d) the purported adulterous affair never happened. That charge was fabricated by USN to facilitate a foregone conclusion for early separation. The woman in question identified as divorced; neither she nor the "husband" was ever queried to substantiate any illicit relationship. The "adulterous affair" is a mistake of fact, (e) after NJP, you received a note from out-of-state, from her stating, "I'm sorry I caused you trouble." (f) your long honorable faithful meritorious service has not been taken into consideration, and OTH discharge status fails to paint the full picture of your valuable professional service to USN, (g) OTH discharge status is a defamatory label, and to label your military service as OTH is unfair, unjust, inequitable, and unlawful, (h) BCNR has been arbitrary and capricious in their failure to consider your arguments, comments, and evidence. BCNR has continued to "presume regularity" of an unlawful NJP tribunal, and has abused its power by denying your reasonable request for an upgrade. [BCNR] [d]enials have been based simply on hubris and bullying tactics without acknowledgment of facts or law, (i) there was nothing "obscene" in your communication with the estranged wife, and there was no documented "adulterous affair." NJP, VA, and BCNR

have made defamatory claims, causing severe long term emotional trauma with social and professional ostracization, as well as loss of VA benefits, (j) NJP intrusion into your personal private life, unrelated to your professional military conduct, is unlawful. Use of your personal affairs to discredit and defame you in a military venue is unfair, unjust, and inequitable. Failure to acknowledge your long and meritorious service is unacceptable, (k) comments to the estranged wife were crude but did not rise to the level of obscene and therefore the charge is in error, (l) invading your privacy and using your private life to bring military charges and punishment are unlawful, (m) a crime, to be under military jurisdiction, must be service-connected, (n) OTH discharge status does not reflect the totality and character of your long honorable and meritorious professional service, and (o) BCNR's continuing support of NJP is unjust, unfair, and inequitable, and BCNR has shown a remarkable lack of accountability. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board unequivocally determined that your discharge from the U.S. Navy Reserve with an OTH characterization was warranted. The Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Navy as a Medical Officer and leader. The Board also noted that your misconduct and total lack of judgment was not just an isolated incident and the record reflected you engaged in such extramarital misconduct with the spouse of an enlisted service member over a period of time. The Board also noted that when you were questioned about your suspected adultery after being read your rights, you "feely admitted" your involvement the woman. Thus, the Board was not persuaded by your arguments of error and found that your OTH separation to be appropriate under the totality of the circumstances.

The Board was unconvinced by your contentions and arguments. First and foremost, your service-connection argument was not persuasive. The Board noted that such a service-connection requirement never applied to administrative NJP proceedings, and the Board determined that your offenses clearly met the service-connection test. Moreover, the Board noted that the O'Callahan case you cited was expressly overruled by the U.S. Supreme Court in Solorio v. U.S., 483 U.S. 435 (1987), which held that the jurisdiction of a court-martial to try a service member does not depend on the "service-connection" of the offense charged. Rather, the Court held that the jurisdiction of a court-martial depends *solely* on the accused's status as a member of the Armed Forces, and not on the service-connection of the offense. (emphasis added)

The Board also determined your arguments, based on the sufficiency of the evidence at NJP, the lack of testimony from certain witnesses, and any hearsay and/or mistake of fact contentions were not convincing. The Board concluded the evidentiary record and NJP hearing substantiated your misconduct, and the Board was not willing to re-litigate the well-settled facts of your case. Moreover, as previously discussed, you admitted to the adulterous affair; which the Board determined is more than sufficient to meet the evidentiary standard at NJP.

Additionally, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and/or to make any conforming changes to your DD Form 214. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH or GEN conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a commissioned officer. The Board also determined that the record clearly reflected your repeated misconduct was deliberate and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA 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. 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 that your request does not merit relief.

You have now attempted on multiple occasions to upgrade your discharge at the BCNR without success. With certain non-material exceptions, your contentions and proffered supporting evidence have largely remained unchanged for each of your petitions, and the Board has declined to grant clemency each time even in light of Wilkie Memo considerations. Unfortunately, at this time the decision of the Board now is final, and your only future recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/26/2024

