



You enlisted in the Marine Corps and began a period of active duty on 8 May 1972. On 24 July 1972, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 10 August 1972, you received a second NJP for assault.

Between 19 January 1973 to 3 August 1973, you received three NJPs. Your offenses were UA, violation of a lawful regulation, communicating a threat, and sleeping on post. Additionally, during this period, on 26 May 1973, you were issued an administrative counseling concerning your substandard performance and duty and poor conduct.

On 18 January 1974 and 21 June 1974, you again received NJP. Your offenses were disrespect in language, disrespect towards a superior commissioned officer, disrespect towards a noncommissioned officer, and sleeping on post while posted as a fire watch. You then commenced a period of UA, on 7 July 1974, that concluded upon your return to military authorities on 22 August 1974; a period totaling 46 days. On 5 November 1974, you presented yourself to the Drug and Alcohol Control Team for an evaluation. The evaluator opined that you showed no interest in a rehabilitation effort and did not seem to want help.

During the period from 20 January to 3 April 1975, you received three additional NJPs. Your offenses were absence from your appointed place of duty, willful disobedience of a superior commissioned officer, absence from your appointed place of duty, and disobedience of a lawful order from a superior commissioned officer. On 16 May 1975, you were counseled and advised that any further involvement of a discreditable nature with civil or military authorities may result in your being processed for an undesirable (Other Than Honorable (OTH)) discharge.

On 23 May 1975, you submitted a written request for separation for the good of the service (GOS) in lieu of trial by court-martial for a period of UA totaling 46 days, disrespect towards a commissioned officer, disobedience, two specifications of disrespect, escaping custody from a commissioned officer, and two specifications of possession of marijuana. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offenses and acknowledged that your characterization of service upon discharge would be under OTH conditions. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service by reason of good of the service. On 16 Jun 1975, 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 change your discharge character of service and contentions that: (1) you were accused of a crime that you did not commit; you were present, but did not participate in the crime, (2) you were advised to take an OTH discharge or be sent to a federal prison, and due to your lack of education and understanding, you agreed to the OTH, (3) you served in the Vietnam war and, after experiencing the death of soldiers, it became hard for you to trust men, women, and children; it caused you to have emotional outbursts, and (4) you did not understand why you were experiencing post traumatic disorder. You assert that later in your life you were diagnosed with "PTSD, bipolar, anxiety, hypertension,

hearing loss in his left ear, and glaucoma.” For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 16 May 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms 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) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After 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 GOS request, 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. Additionally, the Board noted that the misconduct that led to your GOS request was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the Convening Authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board concurred with the AO that, there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct, you did not submit any medical evidence in support of your claim, and there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, 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. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions. Therefore, the Board was not persuaded by your arguments that you lacked understanding of your voluntary request to be discharged in lieu of facing potential confinement, forfeitures, and a punitive discharge. As previously discussed, the Board noted you were assigned legal counsel, submitted

your request after consulting with your counsel, and acknowledged understanding the consequences if your request was accepted.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and concluded that 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 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. 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,

7/18/2024

