



action. On 29 March 1994, you were issued a Page 11 counseling concerning UA. On 26 May 1994, you were issued a Page 11 counseling concerning repeated failures to adhere to Marine Corps grooming standards. On 30 June 1994, you received non-judicial punishment (NJP) for two specifications of failure to obey a lawful order. On 7 July 1994, you were issued a Page 11 counseling concerning your recent NJP, lack of respect for authority, inability to follow instructions, and warned that any future infractions of the UCMJ will result in administrative separation. On 30 November 1994, you were issued a Page 11 counseling concerning willful issuance of useless checks, poor judgement, lack of integrity, indecent language, and two infractions of domestic violence.

On 30 January 1995, you received your second NJP for absence from appointed place of duty. On 3 February 1995, you were issued a Page 11 counseling concerning your disobedience of Marine Corps Base Regulations: one infraction of speeding 56 mph in a 35-mph zone and two infractions of not wearing seat belts. On 23 February 1995, you were referred to mental health for an evaluation due to violent behavior. You were evaluated and diagnosed with antisocial personality disorder. On 2 March 1995, you received your third NJP for destruction of government property.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer (CO) forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The separation authority directed your OTH discharge from the Marine Corps by reason of misconduct due to pattern of misconduct and, on 4 April 1995, 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 character of service and change your narrative reason for separation to “medical reasons.” The Board considered your contentions that: (1) you were coerced under false pretenses into signing a voluntary separation, (2) there is documented psychological trauma noted in your medical records, (3) you did not receive the appropriate amount of medical treatment as recommended by a doctor, (4) you received harassment and reprisal from your company commander, (5) you were offered a voluntary separation promising you that you would receive an upgrade of your character of service after six months and psychological treatment that your physician recommended, (6) you were separated from the service with coercion and deceit to deny you the medical treatment that you are entitled, and (7) you suffer from nightmares, insomnia, road rage incidents and other abnormal behavior from being trained for war. For purposes of clemency and equity consideration, the Board considered your statement and the documentation you provided in support of your application.

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 10 September 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was 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. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of the military. It is noteworthy that the Petitioner's characterological traits have remained interfering despite the passage of time. Temporally remote to his military service, the Department of Veterans Affairs (VA) has granted service connection for mental health concerns. However, his in-service misconduct appears to be consistent with his diagnosed personality disorder, 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 AO concluded, "it is my clinical opinion there is post-service evidence from the VA of mental health concerns 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."

In response to the AO, you submitted additional supporting documentation that provided additional clarification of the circumstances of your case.

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 multiple administrative counselings and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that, while there is post-service evidence from the VA of mental health concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct to a mental health condition, other than your diagnosed personality disorder. As the AO explained, you were appropriately referred for psychological evaluation and properly evaluated during your enlistment and 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. Additionally, the Board determined your VA rating is too temporally remote from your military service. 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. Furthermore, based on your administrative separation processing for misconduct that resulted in an OTH characterization, the Board determined that you were ineligible for a "medical discharge" even if there was evidence to support your referral to the Disability Evaluation System. Finally, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct.

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 your statements and 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.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

11/5/2024

