



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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██████████
Docket No: 2159-20
Ref: Signature date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MARINE ██████████
XXX-XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo of, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
(c) USD Memo of, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016
(d) USD Memo of, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment" 25 August 2017
(e) USD Memo of, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Mental Health Advisory Opinion, 14 Mar 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his characterization of service be upgraded to general (under honorable conditions).

2. The Board consisting of ██████████ ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 2 June 2021 and, pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider.

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3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty at the age of 19 on 6 October 1981.

d. Petitioner participated in operations in Beirut, Lebanon with the American Contingent of the multi-National Peacekeeping Force, while serving with the [REDACTED] from 29 October 1982 to 16 February 1983.

e. On 8 April 1983, Petitioner received nonjudicial punishment (NJP) for knowing and wrongful use of marijuana, a Schedule I controlled substance in violation of Article 134, Uniform Code of Military Justice (UCMJ).¹

f. Petitioner underwent surgery on his right foot, first metatarsal in October 1983.

g. On 17 February 1984, Petitioner received a second NJP for failure to go at the time prescribed to his appointed place of duty, morning muster, in violation of Article 86, UCMJ.

h. Petitioner participated in Contingency Operations in the vicinity of Beirut, Lebanon, as a member of the Joint Task Force, Lebanon, while serving with the [REDACTED] from 7 March 1984 to 26 April 1984.

i. On 27 April 1984, Petitioner was convicted by a summary court martial (SCM) of wrongful use of a controlled substance, marijuana, in violation of Article 134, UCMJ.² His adjudged sentence included 30 days of hard labor without confinement, reduction to the pay of Private First Class/E-2, and forfeitures of \$300 per month for one month.

j. Petitioner participated in Security Operations in support of the American Embassy, Beirut, Lebanon from 27 April 1984 to 10 June 1984.

k. On 11 May 1984, Petitioner received a counseling entry stating, "SNM confirmed as being involved in his second illegal drug use or possession incident. Not referred to formal evaluation/rehabilitation due to his past performance and conduct not warranting retention. SNM does not have potential for continued useful service."

¹ Petitioner's service record book indicates the misconduct was charged as violation of Article 134 vice 112a, UCMJ.

² Id.

l. By counseling entry dated 6 June 1984, Petitioner was notified that he was being recommended for discharge under other than honorable conditions due to misconduct for drug abuse.³

m. By memorandum dated 9 October 1984, the separation authority directed that Petitioner be discharged under other than honorable conditions by reason of misconduct due to drug abuse.

n. On 17 October 1984,⁴ Petitioner was discharged from the Marine Corps under other than honorable conditions by reason of misconduct due to drug abuse.

o. Petitioner asserts he had many personal hardships at home that led to his drug use. He states he had financial problems, his mother was ill, and his siblings were not doing well. He contends he suffered from injury that occurred during training, had surgery, and served a tour of duty in Beirut. Petitioner states that while dealing with his injuries and the constant pressure from subordinates, he was introduced to marijuana from a Marine dealing with a back injury who told Petitioner it was helping him. Petitioner concedes he used marijuana to help him deal with his anxiety and pain. He states he confided in someone senior to him who told him not to say anything because of the drug policy. Petitioner further states that he should have been offered drug counseling.

p. Petitioner's application and record were reviewed by a qualified mental health professional who provided an advisory opinion (AO) for the Board's consideration. See enclosure (5). The AO was previously provided to Petitioner, and although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not do so. However, Petitioner did provide a written statement prior to the AO being written stating that "[w]e are presently being treated for mental health issues by Dr. D. M. and we are greatly appreciative of the support that we are receiving."⁵ The AO was unfavorable and noted that Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition, or psychological/behavioral changes, which may have indicated a mental health condition. Furthermore, additional information, such as medical records containing a diagnosis of a mental health condition/description of symptoms and linkage to Petitioner's military misconduct would aid in rendering an alternate opinion. The AO concluded that the preponderance of available objective evidence failed to establish Petitioner was diagnosed with, or suffered from, a mental health condition at the time of his military service, or his in-service misconduct could be attributed to a mental health condition.

q. Petitioner provided two personal statements and five character references in support of his application.

³ Petitioner's service record book is incomplete; however, the Board relies on a presumption of regularity to support the official actions of public officers, and in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the counseling entry notifying Petitioner of administrative separation processing, the Board presumed Petitioner would have been afforded his procedural rights.

⁴ See enclosure (10), Petitioner's DD Form 215.

⁵ Petitioner's handwritten note also indicated he was receiving treatment at a VA Resource Clinic.

CONCLUSION:

After careful review and consideration of all of the evidence of record and despite an unfavorable AO, the Board unanimously determined that relief is warranted in the interests of justice.

Because Petitioner based his claim for relief in part upon an undiagnosed anxiety condition due to peacekeeping, contingency, and security operations, his application was reviewed in accordance with the guidance of references (b) through (d). Accordingly, the Majority applied liberal⁶ consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his misconduct. In this regard, the Majority agreed in part with the AO, finding that Petitioner's record did not indicate he was diagnosed with a mental health condition; however, they took into consideration Petitioner's deployment to Beirut, Lebanon and candid personal statements. The Board found that Petitioner participated in three peacekeeping/contingency/security operations, two of which after an NJP and SCM had occurred. Of particular note, the Board recognized that Petitioner was not adjudged confinement after his SCM and participated in his third operation the same day the SCM proceeding occurred. Additionally, the Board noted that Petitioner appears not to have been referred to evaluation or rehabilitation and that this decision was entered in his service record book while in the midst of his final operation. Furthermore, the Board finds that it is more likely than not that Petitioner did suffer from a condition or experience due to the anxiety and pain caused by his deployment experiences, surgery, and personal hardship that the condition or experience does mitigate his discharge.

In addition to applying liberal consideration to Petitioner's condition or experience and the effect that it may have had upon his conduct, the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, that Petitioner deployed and suffered from anxiety and injury; Petitioner's credible personal statements conceding his misconduct and assertion that he has sought and received mental health treatment from the Department of Veterans Affairs (VA) to rehabilitate himself; volunteered to serve in the Marines at the age of 19; Petitioner's deployment; relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Additionally, although the Board does not condone Petitioner's misconduct, it was non-violent in nature and seemingly related to Petitioner's inability to receive appropriate assistance from his command when he did ask for help. Based upon this review, the Board determined that the interests of justice warrant upgrading Petitioner's characterization of service to general (under honorable conditions) under the totality of the circumstances. The mitigating effect of Petitioner's condition or experience upon his misconduct, combined with his deployment history, and the passage of over 36 years convinced the Board that no further purpose is served by characterizing his service as other than honorable.

⁶ Although Petitioner did not provide a mental health diagnosis by the Department of Veterans Affairs (VA), he did indicate that he and presumably his family were being treated by the VA.

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RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (Under Honorable Conditions)" and that Blocks 12b and 12c reflected on his DD Form 215 be reflected on the new DD Form 214.

That no further corrective action should be taken.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/13/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]