



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

█  
Docket No: 5689-20

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "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, "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," of 25 August 2017 (Kurta Memo)  
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary

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 naval record be corrected to upgrade his characterization of service and make other conforming changes to his Certificate of Release or Discharge from Active Duty (DD Form 214) following his discharge for a personality disorder.

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 28 May 2021, and, pursuant to its regulations, determined that 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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 the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active service on 25 February 2013. Petitioner's pre-enlistment physical on 25 September 2012 and self-reported medical history noted no psychiatric or neurologic abnormalities, conditions, or symptoms.

d. On 18 December 2013, Petitioner received a "Page 11" counseling warning (Page 11) for malingering. The Page 11 stated, in part:

Your recent actions may be construed as an act of malingering. Every physician that has spoken with you and/or reviewed your case, to include the Battalion Medical Officer, after a myriad of medical testing and hospitalization, have found no evidence of illness or underlying condition. Furthermore, your subsequent diagnosis of adjustment disorder does not excuse you from duties that may be assigned by your commanding officer that he deems appropriate. Reports/complaints of illness from any Marine is taken seriously and require expenditure of time and resources; often substantial. Any false claim/complaint of illness made by you to avoid duty, service, training, or responsibilities will not be tolerated. Any suspected instance of malingering will be investigated and, if substantiated, will be adjudicated as the command sees fit.

The Page 11 expressly warned Petitioner that a failure to take corrective action and any further Uniform Code of Military Justice violations may result in judicial or adverse administrative action, including but not limited to administrative separation. The Petitioner did not submit a Page 11 rebuttal statement for the record.

e. On 4 April 2014 the 2d Marine Regiment Psychiatrist (MRP) strongly recommended Petitioner's expeditious administrative separation for a mental health problem that was a condition not a disability. The MRP diagnosed Petitioner with "Other Problem Related to Employment and Phase of Life," representing an inability to adapt to military service.

f. On 16 May 2014 Petitioner received a Page 11 counseling warning notifying him that he was eligible, but not recommended for promotion to Lance Corporal for the month of June 2014 due to a lack of initiative and leadership. On 24 June 2014 Petitioner received a Page 11 counseling warning acknowledging that he was diagnosed with a mental health problem that did not qualify as a naval service disability.

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g. On 17 July 2014 the Petitioner was notified that he was being processed for an administrative discharge by reason of convenience of the government due to condition not a disability (i.e., adjustment disorder with depressed mood). The Petitioner consulted with counsel and waived his right to provide a written rebuttal statement to the proposed separation. On 24 July 2014 the [REDACTED] Division Staff Judge Advocate determined that Petitioner's separation was legally and factually sufficient. On 25 July 2014 Petitioner's commanding officer recommended a general (under honorable conditions) (GEN) characterization of service. Ultimately, on 11 August 2014, the Petitioner was discharged from the Marine Corps with a GEN characterization of service with "Condition, Not a Disability" as the listed narrative reason for separation and "JFV1" as the listed separation code. The Petitioner also received an "RE-3P" reentry code which corresponds to "failure to meet physical/mental standards."

h. On 3 November 2016 the Naval Discharge Review Board concluded that Petitioner's discharge was proper as issued and that no change was warranted.

i. Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his brief enlistment was 3.60. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service.

j. Marine Corps Separation and Retirement Manual (MARCORSEPMAN) paragraph 6203.2 states that the least favorable characterization of service for conditions not amounting to a disability is GEN when warranted under certain circumstances (to include proficiency and conduct average markings).

k. In short, Petitioner contended he had no documented misconduct in his record and that because his performance was a direct result of his disorder, there was no justification for his characterization of service to be anything other than honorable. The Petitioner argued that it was an error and unjust to have characterized his service as GEN.

l. As part of the review process, the Board's Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 21 May 2021. The Ph.D. initially observed that Petitioner's in-service records did contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes leading to his diagnosis of adjustment disorder for which Petitioner received treatment. The Ph.D. noted that Petitioner did not present any evidence suggesting the in-service diagnosis was erroneous. The Ph.D. concluded by opining that there was sufficient evidence Petitioner exhibited behaviors associated with a mental health condition on active duty and his in-service diagnosis was not in error. The Ph.D. also opined that there was no indication in Petitioner's record he suffered from a severe mental health condition/disability, but the Ph.D. concluded that Petitioner's records indicated his symptoms would have continued and interfered with his ability to meet the demands of military service if he had not been discharged.

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#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in references (b) through (e). Specifically, the Board considered whether his application was the type that was intended to be covered by these policies.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board believed that there was an injustice in ultimately separating the Petitioner with a GEN characterization for service. The Board noted that there were no instances of adjudicated misconduct in Petitioner's service record and determined his conduct trait average was due in part to Petitioner's diagnosed disorder affecting his performance. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under GEN conditions. Especially in light of the Wilkie Memo, the Board concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that flawless service is not required for an honorable discharge and that a discharge upgrade is appropriate at this time.

The Board also determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain additional remedial administrative changes are warranted to the DD Form 214.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "Honorable," the separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," the narrative reason for separation should be changed to "Secretarial Authority," and the reentry code be changed to "RE-1J."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new Honorable Discharge Certificate.

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.

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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 Regulations, 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.

6/4/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]