



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

█
Docket No: 7100-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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 PTSD," of 3 September 2014
(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) PDUSD 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
(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

Encl: (1) DD Form 149 with attachments

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 reflect a medical or convenience of the government discharge, impliedly an upgrade to his characterization of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 14 July 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 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 determinations (Wilkie Memo). Additionally, the Board considered the advisory opinion (AO)

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USMC, XXX-XX-[REDACTED]

furnished by a qualified mental health provider, Petitioner's rebuttal to the AO, and the subsequent AO.

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. Petitioner entered a period of active duty in the Marine Corps on 26 April 1984. On 23 April 1985 he received nonjudicial (NJP) punishment for five specifications of disrespect to a Corporal, disobeying an order, and two specifications of communicating a threat in violation of Articles 91, 92, and 134, Uniform Code of Military Justice (UCMJ). On 13 June 1986 Petitioner received a second NJP for three specifications of charging personal phone calls on a government phone, three specifications of unauthorized absence (UA), and willfully disobeying a Gunnery Sergeant's order in violation of Articles 92, 86, and 91, UCMJ. On 17 December 1986 Petitioner was retained after an administrative discharge board proceeding.¹ On 13 February 1987 Petitioner was convicted by special court martial (SPCM) of failure to go in violation of Article 86, UCMJ. On 23 April 1987 Petitioner received a third NJP for a 3 day period of UA in violation of Article 86, UCMJ. Petitioner received a counseling entry and retention warning on the same day for a pattern of misconduct as evidenced by "4 NJPs and 1 SPCM."² On 8 July 1988 Petitioner was convicted by general court martial (GCM) of a 44 day period of UA, 27 specifications of wrongfully making and uttering a check, and false official statement in violation of Articles 86, 123a, and 134.³ Petitioner was discharged on 29 January 1991 with a dishonorable discharge as adjudged by the military judge.

d. On 26 March 1987 Petitioner was diagnosed in-service with Adjustment Disorder with Depressed Mood and Conduct Disturbance, and Alcohol Abuse, presumptive.

e. Petitioner contends he should have been medically discharged due to mental illness, Adjustment Disorder with Depression, and Alcohol Abuse, which he states is clearly

¹ Petitioner's service record is incomplete and does not contain the administrative discharge board report. 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. Furthermore, a handwritten note from the Staff Judge Advocate indicated that the Commanding General directed that Petitioner be transferred to another unit in the division.

² Petitioner's service record is incomplete and does not contain documentation pertaining to a fourth NJP.

³ The total amount of the checks was approximately \$2762.30 and written between August 1987 and March 1988.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USMC, XXX-XX [REDACTED]

documented in his medical records. He further states his untreated depression combined with his drug use caused him to make bad decisions which he truly regrets.

f. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 14 April 2021 and a subsequent AO dated 30 April 2021. The AO noted in pertinent part that Petitioner provided documentation from a civilian institution that he underwent medication management, with intermittent therapy, from 5 November 2014 to through 27 September 2016. His diagnoses were amended throughout his treatment to include Adjustment Disorder with mixed emotional features; Major Depressive Disorder, single episode-moderate; Anxiety Disorder, Not Otherwise Specified; evidence of cluster A and B personality disorder traits, and Dysthymia Disorder was ruled out. The treatment solely focused on the work stressors and subsequent issues. Furthermore, the AO noted there remains a lack of objective evidence Petitioner's misconduct arose from a mental health condition. Subsequently, the AO concluded that the preponderance of available evidence fails to establish Petitioner's in-service misconduct was mitigated by these mental health conditions.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief and his characterization of service should be corrected to reflect a bad conduct discharge.

The Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition at the time of discharge; however did not find a nexus between Petitioner's condition and misconduct because at least four disciplinary proceedings occurred prior to the time Petitioner was diagnosed in-service. The Board also noted that Petitioner appeared to have sought counseling due to relationship issues between Petitioner and his girlfriend as noted in the AO of 30 April 2020. Furthermore, the Board found that the gravamen of Petitioner's misconduct after he was diagnosed with a mental health condition in-service was premeditated and typically premeditated misconduct is not attributed to the condition itself.

In addition to applying liberal consideration to Petitioner's mental health condition 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 noted that dishonorable discharges are reserved for the most serious offenses and that although the Board does not condone Petitioner's repeated misconduct, found the adjudged characterization of service to be overly severe.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as a "Bad Conduct Discharge."

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USMC, XXX-XX [REDACTED]

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.

7/21/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]