



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

█
Docket No: 8268-20
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) Title 10 U.S.C. § 1552
(b) USD Memo of 25 Aug 17 “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” (Kurta Memo)
(c) USECDEF Memo of 25 Jul 2018 “Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations”

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 214 of 22 Nov 1990
(3) Rehabilitation Program of 20 Feb 1990
(4) Official Military Personnel Files
(5) Case Summary with Advisory Opinion from Mental Health Professional

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 by upgrading his discharge to a honorable characterization of service and narrative reason for separation be described as Secretarial Authority.

Petitioner contends that: (a) his discharge is inequitable in that it violated procedural safeguards and he was suffering from a then undiagnosed and untreated mental illness; (b) his discharge was inequitable because under the military’s current understanding of mental health conditions, he would not have received an other than honorable discharge because his alleged misconduct was directly attributable to his undiagnosed bipolar disorder; and (c) his discharge was improper under MARCORSEPMAN paragraph 6419 because he voluntarily reported his drug use and was referred to a Level III treatment program, subsequently requiring section 6208 of the then operable MARCORSEPMAN to apply, which would have resulted in an honorable or a general discharge.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner’s application on 19 July 2021. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with

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administrative regulations and procedures applicable to the proceedings of the Board. 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 references (b and c).

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

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

b. Petitioner enlisted in the Marine Corps and commenced a period of active duty on 24 May 1988. See enclosure (2).

c. Petitioner self-reported that he used cocaine, and on 20 February 1990 was enrolled in a rehabilitation program. Petitioner's rehabilitation program consisted of structured six-week course of treatment. The contemporaneous medical records at the time of his self-referral indicated that a psychiatric consult was not required. See enclosure (3).

d. On 17 April 1990 Petitioner completed his course of treatment. On 4 June 1990, and again on 28 June 1990, he tested positive for use of cocaine. Facing a court-martial for using cocaine, on 27 September 1990, Petitioner submitted a request for discharge in lieu of trial by court-martial. On 14 October 1990, a Marine Corps staff judge advocate reviewed Petitioner's request and found it to be sufficient in law and fact. The advice of the staff judge advocate noted that Petitioner was offered drug treatment again, and that he elected not to receive treatment. Petitioner was provided the address of a Department of Veterans Affairs medical facility with treatment capabilities. On 22 October 1990 Petitioner's commander recommended that Petitioner be discharged with an other than honorable characterization of service. In the commander's transmittal letter he noted that he considered Petitioner's preservice drug use waiver in evaluating Petitioner's potential for future service, but not with respect to his recommendation concerning Petitioner's characterization of service. On 22 November 1990, Petitioner was discharged with an other than honorable characterization of service. See enclosure (4).

e. As part of the review of Petitioner's case, a favorable advisory opinion (AO) of 2 May 2021 was issued by a qualified mental health professional. The mental health professional concluded that based on the available evidence, it is the professional's considered medical opinion there is sufficient evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and his misconduct may be mitigated by his mental health condition. See enclosure (5).

CONCLUSION

The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request did not warrant relief.

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In review of all of Petitioner's materials, the Board did not find an injustice in his record warranting relief. The Board did not concur with the finding of the AO. In reaching this conclusion, the Board found 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. To the contrary, Petitioner's admission notes to his rehabilitation treatment noted that there was no need for a psychiatric consultation. Ultimately, the Board determined that the available information did not provide enough clinical evidence to establish an onset and development of mental health symptoms or identify a nexus with Petitioner's misconduct. In addition, the Board disagreed with Petitioner's interpretation of the applicability of certain sections of the MARCORPSEPMAN. The Board found that Petitioner was not punished for using cocaine after his self-referral and he was sent to rehabilitation treatment. After Petitioner completed treatment he used cocaine on two separation occasions, for which charges were properly prepared for court-martial. Petitioner's request to be discharged in lieu of trial by court-martial was found to be sufficient in law and fact, and he was offered treatment again in connection with his discharge, which Petitioner declined. In conclusion, given the totality of the circumstances, as well as a review of Petitioner's overall service record, the Board determined that Petitioner's request does not merit relief.

RECOMMENDATION

In view of the above, the Board recommends no relief.

EXECUTIVE DIRECTOR'S CONCLUSION

Notwithstanding the Board's conclusion, I believe to the contrary, Petitioner's misconduct during his short time in the Marine Corps was impacted by his mental health condition. I agree with the Mental Health Professional's AO that there is sufficient evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and his misconduct may be mitigated by his mental health condition. Additionally, I found Petitioner's statement of 27 September 1990 very compelling which supports that Petitioner was struggling with a mental health issue at the time of service.

Based upon this review, I concluded that no useful purpose is served by continuing to characterize Petitioner's service as other than honorable characterization of service. Accordingly, I recommend that Petitioner's characterization of service should be upgraded to General (Under Honorable Conditions).

EXECUTIVE DIRECTOR'S RECOMMENDATION

Petitioner's naval record be corrected by changing Petitioner's characterization of service to "General (Under Honorable Conditions)," separation authority to "MARCORSEPMAN, par 6214," SPD code to "JFF1," and narrative reason for separation to "Secretarial Authority." Petitioner will be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) consistent with this change.

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

No further action will be taken.

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. The foregoing action of the Board is submitted for your review and action.

7/22/2021

[REDACTED]

Executive Director

Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Executive Director's Recommendation (Partial Relief)

~~Reviewed and Approved Board Recommendation (Deny Relief)~~

8/17/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]