



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: 8877-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MEMBER █
XXX XX █ USMC

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
(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 his naval record be corrected to reflect a general, under honorable conditions, character of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 2 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 Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel 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 also considered the revised advisory opinion (AO) dated 26 June 2021 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 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 interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 2 September 1997 and served honorably until 15 November 2000, but these dates are not reflected on Petitioner's DD Form 214. He reenlisted on 16 November 2000. Petitioner deployed in support of OPERATION ENDURING FREEDOM from December 2001 to March 2002.

d. On 17 September 2002, Petitioner was convicted by special court-martial for wrongful use of cocaine on divers occasions and sentenced to reduction in rank, forfeiture, confinement, and a bad conduct discharge (BCD). The BCD was subsequently approved at all levels of review, and on 7 April 2004, Petitioner was discharged.

e. On 19 February 2019, the Naval Discharge Review Board (NDRB) upgraded Petitioner's characterization of service from BCD to other than honorable (OTH) based on Petitioner's in-service medical screening during appellate leave which described various mental health diagnoses.

f. Petitioner contends he suffered from undiagnosed PTSD while in service. He also submitted two advocacy letters for consideration by the Board.

g. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO on 9 June 2021. The AO concluded there was insufficient evidence Petitioner was diagnosed with PTSD, Traumatic Brain Injury (TBI), or a mental health condition; suffered from PTSD, TBI, or a mental health condition at the time of his military service; or that his in-service misconduct could be attributed to a mental health condition. In response to the unfavorable AO, Petitioner provided a statement and post-discharge clinical records. The mental health provider reviewed the rebuttal documentation and revised his earlier AO, stating the new information supported Petitioner's contention he incurred PTSD as a result of his military service. The AO further noted the new information provided in rebuttal was "additive to prior evidence documented by the NDRB in their 2019 decision" and stated Petitioner's in-service drug use can be viewed as further evidence of an evolving PTSD condition with substance abuse reflecting a maladaptive coping mechanism rather than the cause of the psychological symptoms. The AO concluded the evidence supported Petitioner's contention he experienced undiagnosed PTSD, incurred during his military service, which may mitigate his in-service misconduct.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board, applying liberal consideration and relying upon the favorable AO, determined there was sufficient evidence to support a finding that Petitioner's PTSD mitigated the misconduct that led to his BCD. Noting the new medical information not previously considered by the NDRB and the AO's explanation that Petitioner's drug use was a maladaptive coping mechanism for his undiagnosed PTSD, the Board concluded Petitioner's character of service warranted an upgrade to general, under honorable conditions.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating his character of service as "general, under honorable conditions."

Headquarters Marine Corps correct the block 12 Record of Service to include the dates of Petitioner's first enlistment and revise the corresponding date calculations.

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.

7/20/2021

[REDACTED]
Executive Director
[REDACTED]