



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

[REDACTED]
Docket No: 629-21
Ref: Signature Date

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

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

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 to make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 16 July 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 an 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 7 July 1998. Petitioner's pre-enlistment physical on 31 July 1997 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Petitioner admitted to pre-service marijuana use on his enlistment application.

d. On 3 December 1998 Petitioner received non-judicial punishment (NJP) for the larceny of a compact disc from the AAFES store on base. The Petitioner did not appeal his NJP. On 14 June 2000 Petitioner routed a humanitarian transfer request following the death of his father and due to his mother's failing health.

e. On 5 January 2001 Petitioner received NJP for the wrongful use of marijuana. Petitioner did not appeal his NJP. On 22 January 2001 Petitioner was notified he was being processed for an administrative discharge by reason of misconduct due to drug abuse. Petitioner elected to exercise his rights to consult with counsel and to submit a written rebuttal statement, but expressly waived his right to present his case to an administrative separation board. Ultimately, on 9 March 2001 Petitioner was discharged from the Marine Corps for drug abuse with an other than honorable conditions (OTH) characterization of service and assigned an RE-4B reentry code.

f. Petitioner's overall active duty trait average was 3.90 in conduct as computed from marks assigned on his periodic performance evaluations. Marine Corps regulations in place at the time of Petitioner's discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service.

g. In short, Petitioner contended that he was suffering from undiagnosed service-connected post-traumatic stress disorder (PTSD) and other mental health conditions stemming from a live fire training accident in which he received a concussion, one Marine was killed, and two other Marines were injured. The Petitioner contended he reverted to his pre-service use of marijuana and alcohol to self-medicate his depression and anxiety. The Petitioner argued that the Board must view his mental health conditions as a mitigating factor to the misconduct underlying his separation and OTH discharge and upgrade his characterization of service.

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h. As part of the review process, the BCNR Physician Advisor, who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed Petitioner's contentions and the available records, and issued an AO dated 6 July 2021. The MD initially observed that the Petitioner provided post-service medical records that presented a corroborating history of onset of symptoms of depression, anxiety, and PTSD stemming from the live fire incident and subsequent marital/family stressors on active duty leading to self-medication with marijuana to alleviate his psychological distress. The MD noted that it was not uncommon for people with a history of substance abuse to revert to this maladaptive coping strategy during times of distress. However, the MD determined that larceny would not be a typical misconduct behavior resulting from a developing depressive or anxiety disorder. The MD concluded by opining based on the available evidence that there was sufficient indirect evidence that the Petitioner incurred a mental health condition on active duty, but that only some of his misconduct could be attributed to a mental health condition.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's PTSD mitigated the drug-related misconduct used to characterize his discharge. The Board concluded that the Petitioner's PTSD-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. 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 OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge. Additionally, the Board determined that Marines should receive no higher discharge characterization than is due. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. Further, the Board determined that Petitioner's intentional misconduct involving larceny was not mitigated by mental health conditions. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the

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record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a GEN characterization of service and no higher. The Board did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge.

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 "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

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

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 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.

7/21/2021

[REDACTED]

Executive Director

Signed by [REDACTED]