



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

[REDACTED]  
Docket No: 1265-21

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 23 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

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clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a 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 12 April 2001. Petitioner's pre-enlistment physical on 27 January 2001 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On Petitioner's enlistment paperwork, he admitted to pre-service marijuana use and a 1996 DUI conviction.

d. On 25 September 2002 Petitioner received non-judicial punishment (NJP) for insubordinate conduct and unauthorized absence (UA). Petitioner did not appeal his NJP. On 29 July 2003 Petitioner was issued a "Page 11" counseling warning (Page 11) documenting his civilian arrest for public intoxication in [REDACTED]. The Page 11 warned Petitioner that a failure to take corrective action may result in administrative separation or judicial proceedings. Petitioner did not make a rebuttal statement to the Page 11. On 15 December 2003 Petitioner underwent a medical evaluation and the practitioner determined that Petitioner met the criteria for alcohol abuse and recommended his administrative separation.

e. On 13 February 2004 Petitioner received NJP for insubordinate conduct, five specifications of UA, reckless driving, and destruction of property from a hit and run incident. Petitioner did not appeal his NJP. On 10 May 2004 Petitioner was convicted at a Summary Court-Martial of breaking his NJP-imposed restriction on multiple occasions.

f. On 9 June 2004 Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, and alcohol abuse rehabilitation failure. Petitioner waived his rights to consult with counsel and to request a hearing before an administrative separation board. Ultimately, on 27 July 2004 Petitioner was discharged from the Marine Corps for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

g. On 29 October 2020, the VA granted Petitioner a service-connection for PTSD for treatment purposes only.

h. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 3.47 in conduct as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

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i. In short, Petitioner contends that he was suffering from PTSD due to his deployment to Iraq in support of Operation Iraqi Freedom. The Petitioner argues that the Board must view his mental health condition as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

j. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued a medical opinion on 28 June 2021. The Ph.D. initially observed that Petitioner was evaluated in December of 2003 and found to meet the criteria for alcohol abuse. The Ph.D. stated that it was common for persons with undiagnosed PTSD to resort to maladaptive coping strategies including alcohol abuse to alleviate mental health symptoms particularly when they have a history of misuse. The Ph.D. concluded by opining that Petitioner exhibited some behaviors indicative of a mental health condition that would mitigate only the misconduct that occurred after the purported trauma associated with his Iraq deployment.

#### 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. 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 felt that Petitioner's PTSD mitigated some of the misconduct used to characterize his original OTH 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 post-deployment 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 also that determined that Petitioner's misconduct prior to his Iraq deployment was not attributable to, or mitigated by, PTSD. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. 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

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error or injustice, the Board generally will not summarily upgrade a discharge to Honorable 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 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 also did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that they were all proper and in compliance with 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)."

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.

7/26/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]