



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

█
Docket No: 2702-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
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) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (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
(e) USD 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," of 25 July 2018
(f) Advisory opinion of 17 August 2021, Petitioner's response, and revised advisory opinion of 7 September 2021

Encl: (1) DD Form 149 w/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 record be corrected by upgrading his discharge to a medical discharge, to submit awards in his record and update them in the national archive, to provide him a new DD 214, to provide him legal assistance, and to provide to him a second advisory opinion.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 13 September 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, and references (b) through (e), which include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic

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stress disorder (PTSD) (Hagel Memo), the 24 February 2016 supplemental guidance from the Principal Deputy Undersecretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or Traumatic Brain Injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (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 reference (f), which contains the 17 August 2021 advisory opinion (AO) furnished by qualified mental health provider, along with the Petitioner's response, and a revised AO.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

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

b. The Petitioner enlisted in the Marine Corps and commenced a period of active duty training on 13 September 1993. On 13 February 1994, the Petitioner completed his initial training and was released from active duty to the Select Marine Corps Reserve (SMCR). On 6 October 1996, he received his first retention/warning letter due to his unsatisfactory drill participation on 5 to 6 October 1996 due to his unauthorized absence. On 8 December 1996, he received another retention/warning letter due to his unsatisfactory drill participation. On 15 January 1997, he was informed that he was not recommended for promotion to corporal due to his unsatisfactory drill participation. Again on 2 February 1997 and 12 March 1997, he received warnings for unsatisfactory drill participation. On 12 March 1997, the Petitioner reported to drill and he was notified that a separation package for him would be halted as long as he made up his missed drills and continued to maintain a satisfactory drill status. The Petitioner agreed, but on 24 May 1997, he received another retention/warning letter due to his unsatisfactory drill participation. On 8 June 1997, the Petitioner received another retention/warning letter due to his unsatisfactory drill performance. The Petitioner was discharged on 20 January 1998 on the basis of his failure to participate as a reservist not on active duty, with an other than honorable characterization of service.

c. In 2016, the Petitioner filed a petition with this Board, contending that his characterization of service was inequitable in that his command convinced him he would get a general discharge, and that his command did not empathize with his reasons for missing drill. He also stated that he had some struggles while in the Marine Corps, and that post-service he has had several accomplishments. On 19 August 2017, the Board denied his request. In 2019, the Petitioner filed another petition with this Board, contending that his discharge was not equitable in total character and that he believed his former medical condition was not considered or reviewed. The Board sought an AO for this petition, which rendered an unfavorable finding. On 27 January 2021, the Board denied his petition.

d. In his current petition, the Petitioner provided new and material evidence in support of his application. Petitioner again contended his other than honorable discharge from the SMCR was

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due to TBI stemming from a physical assault he suffered in August 1994 as well as in a head-on collision car accident in October 1999. The Petitioner also contends that he suffers from PTSD as a result of these two events.

e. As a result of the new evidence that the Petitioner provided concerning his mental health conditions, the Board sought an AO, which is included in reference (f). The initial AO was unfavorable and found no objective evidence in the clinical records made available that contained either a clinical history or diagnosis of TBI or PTSD to support the Petitioner's contentions. In his rebuttal to the AO, the Petitioner provided additional supporting evidence, which included a letter from his counselor, who stated she had been treating the Petitioner for PTSD. She stated that the Petitioner presented her with the surfacing of repressed memories when confronted with historical information during a background check that he did not previously remember. She documented the history as told by the Petitioner, and diagnosed him with PTSD with cited traumatic stressors of physical assault and three "serious" car accidents during his service in the SMCR. According to the revised AO:

The objective evidence is stronger in support of his contention of PTSD from his physical assault (and motor vehicle accidents) in that the ER clinical record did document physical assault with a pipe, "temporary paralysis," and injuries to neck and shoulder. His description of witnessing his friend receive a more severe beating (the one initially involved in the fight) and being assaulted would meet criteria for a traumatic event. Petitioner was evaluated, diagnosed, and treated by a mental health clinician for PTSD, and characterized his substance abuse as a self-medication strategy for his PTSD symptoms. Additionally, she opined his 'environmental conditions, including an assault and car accidents' led to his poor military performance following the traumatic events.

f. The AO concluded, "[i]n my considered medical opinion, the preponderance of objective evidence does not support Petitioner's contention of TBI as mitigation for his unsatisfactory reserve service. However, the available objective clinical evidence is supportive of Petitioner's contention that he likely experienced undiagnosed PTSD from a series of traumatic events, and his experience of PTSD may have contributed to his failure to fulfill his reserve obligations."

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (f), the Board determined that the Petitioner is entitled to relief. The Board concurred with the revised AO. The Board observed that the Petitioner's injuries preceded, and overlapped, the time period that Petitioner engaged in misconduct that resulted in his discharge. While the Board does not condone ignoring one's legal obligation to participate in the reserve component, the Board determined that upgrading his discharge characterization from other than honorable to general (under honorable conditions) is appropriate given the finding of the revised AO. As for the Petitioner's requests concerning his awards and/or commendations in his records, the Board directs the Marine Corps to provide Petitioner the report of a record review detailing the awards and commendations to which the Petitioner is authorized to wear.

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Based on a careful review of all of the facts presented, the Board concludes that Petitioner is entitled to relief as follows.

RECOMMENDATION

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

Petitioner be issued a new DD Form 214 indicating a General (Under Honorable Conditions) characterization of service.

That Petitioner's record be reviewed for all entitled awards.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

9/29/2021

[REDACTED]

Executive Director

Signed by [REDACTED]