



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

█
Docket No: 2787-21

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 of 3 September 2014 (Hagel Memo)
(c) PDUSD Memo of 24 February 2016 (Carson Memo)
(d) USD Memo of 25 August 2017 (Kurta Memo)
(e) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 w/encls
(2) Advisory Opinion of 25 July 2021

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 discharge be upgraded to honorable. Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 1 December 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 medical record, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the 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. Petitioner enlisted and began a period of active duty on 22 September 1977.

c. Petitioner, a registered alien, served without incident his first year of enlistment. On 18 September 1978, he submitted a dependency application for his illegitimate child, along with birth records identifying him as the father and a notarized affidavit of paternity. This request

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generated a string of ongoing correspondence between his command and Headquarters Marine Corps, from that time through his transfer in April 1978, pertaining to proof of paternity in the absence of a court order, confirming the identity of the custodial guardian for purposes of dependent support, and requiring detailed evidentiary proof of support through monthly financial records.

d. On 21 November 1978, Petitioner received nonjudicial punishment (NJP) for Article 91 (disrespect), for using disrespectful language incident to an Article 92 (orders violation) for disobeying an order from a corporal to get out of the bathroom.

e. On 23 March 1979, Petitioner, then a lance corporal and mess specialist, received a second NJP for Article 92 (orders violation), for disobeying an order pertaining to his mess cleaning duties issued by the lance corporal appointed as the Chief Cook.

f. Petitioner transferred to [REDACTED] Regiment, Marine Corps [REDACTED] [REDACTED] on 16 April 1979.

g. On 13 July 1979, Petitioner received correspondence via his new command from Headquarters Marine Corps requesting that he update the address of the custodial guarding of his illegitimate son.

h. On 17 July 1979, Petitioner was performing duties in the mess hall. In the course of his duties, he was physically assaulted and ultimately transported by another Marine to the Emergency Room for treatment of his injuries. His medical record, which references as "mess hall scuffle" documents a 4 centimeter contusion on his face with a laceration across it and injuries to the back of his head, neck, and shoulders.

i. Shortly after this incident, Petitioner's record reflects a pattern of behavior beginning with a third NJP on 18 September 1979 for two counts of Article 86 (Unauthorized Absence) from his duties at the mess hall.

j. Petitioner received a fourth NJP on 30 September 1979 for two more counts of Article 86 (UA) from cleaning duty and Article 92 (orders violation) for having an expired or invalid license. He was counselled that same date for having a poor attitude, for frequent offenses, and for having a "slovenly professional reputation."

k. Petitioner received a fifth NJP for four counts of Article 134 (restriction breaking) on 24 October 1979 for failure to report at the assigned place and time.

l. On 9 January 1980, Petitioner received counseling for failure to maintain his living area in a satisfactory manner and received his final, sixth NJP shortly thereafter on 15 January 1980 for Article 86 (UA) from physical training.

m. On 28 January 1980, Petitioner's command provided him with a standard form for acknowledgement of rights to be exercised or waived during administrative separation processing, in which he waived his rights to counsel and to an administrative discharge board.

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n. On 30 January 1980, Petitioner's Commanding Officer (CO) signed a letter recommending that Petitioner be administratively discharged for misconduct for frequent involvement of a discreditable nature with military authorities and recommended an other than honorable discharge.

o. The CO's recommendation was forwarded by the chain of command to the approval authority on 6 February 1980, and on 7 February 1980, the Petitioner was finally notified of the recommendation for his separation, the basis, and the potential that he may receive an other than honorable discharge. The CO's recommendation was approved on 21 February 1980, following legal review, and Petitioner was discharged on 29 February 1980 with an other than honorable discharge.

p. At the time of his discharge, Petitioner indicated depression or excessive worry as a condition during his final physical. The medical note from his physical states this concern was due to his "reason for discharge."

q. Petitioner contends that he was violently assaulted by his staff sergeant and experienced incredible stress, fear, and depression because he was required to continue working alongside his assailant with the constant threat of retribution if he found himself alone or unguarded. Petitioner explained that he lost trust in his superiors and became withdrawn and rebellious, with a noticeable deterioration in his performance of duties, that he recalls being asked if he wanted to leave the Marine Corps, and that he said yes. He contends that, at the time he initially met with the CO to discuss his discharge, he was told he would be released with a General Under Honorable Conditions discharge and, after signing everything they put in front of him and awaiting discharge orders, he was confused that they finally gave him a General Other than Honorable discharge.

r. Petitioner submitted matters for consideration to support his post-service diagnosis of post-traumatic stress disorder by the Department of Veteran's Affairs (VA) and to provide an observational record of his symptoms and behavioral changes from a family member. Some time prior to January 2020, Petitioner was diagnosed with severe stress reaction and referred for counseling and further diagnostic testing.

s. On 10 January 2020, a licensed clinical social worker diagnosed the Petitioner with PTSD after completing a series of assessments and inventories. This diagnosis specified that his PTSD resulted from experiencing the traumatic event of his assault while stationed at Marine Corps [REDACTED].

t. On 25 June 2020, a licensed Doctor of Psychology evaluated Petitioner as part of a disability benefits questionnaire and diagnosed him with the sole condition of intermittent explosive disorder. The report acknowledged that Petitioner's test scores for PTSD exceeded the threshold indicative that PTSD is likely, but assessed that Petitioner did not meet the full criteria for PTSD because he did not suffer a traumatic event.

u. On 25 July 2021, an AO reviewing enclosure (1) and Petitioner's service and medical records opined, based on the conflicting diagnoses, that it would be speculative to differentiate

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what was willful misconduct, what might be related to a mental health condition, what that mental health condition might be, or when he exhibited symptoms.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by those policies.

In this regard, the Board noted Petitioner's misconduct and does not condone his actions. However, based upon Petitioner's service record and the matters he presented for consideration, the Board found that Petitioner's contentions regarding the "mess hall scuffle" credible based. The Board based this finding on the absence of any mention of this physical altercation except the emergency room treatment documented in his medical record, which stands in contrast to the extensive counseling and misconduct documented in his service record for comparatively lesser offenses, the consistent presentation of the injuries documented in his medical record against his description of the attack and Petitioner's personal testimony of the experience and the impact that it had on him. The Board observed that the nature of the Petitioner's misconduct shortly after this assault was consistent with the avoidant behavior clinically outlined by the licensed clinical social worker in his initial PTSD diagnosis, was consistent with the Petitioner's contentions that he suffered incredible stress and apprehension in anticipation of retaliation by the staff sergeant who was still senior to him and still part of his unit, and was consistent with the statement of petitioner's family member in observing his behavioral changes between his initial enlistment and his discharge. The Board further noted that Petitioner's command secured his waiver of rights and then waited 10 days before providing him with his notification of administrative separation, even though his official records reflect that the command had already forwarded an adverse recommendation for approval prior to that notification.

Therefore, in consideration of the totality of Petitioner's contentions of injustice and applying liberal consideration to his claim of PTSD, the Board found it in the interest of equity to grant relief in the form that his characterization of service should be changed to "General (Under Honorable Conditions)."

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record shall be changed by showing that, on 29 February 1980, he received a "General (Under Honorable Conditions)" discharge.

That the Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) incorporating this change.

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

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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.

12/23/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]