



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

█
Docket No: 2980-21

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) 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 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

Encl: (1) DD Form 149 w/attachments
(2) Advisory opinion of 17 Jun 2021, 12 Jul 2021 Petitioner's rebuttal, and AO's review of rebuttal
(3) 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 characterization from other than honorable to honorable and changing his narrative reason for separation to disability, his reenlistment code to RE-RI, and his SPD "accordingly."

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 20 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

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claiming post-traumatic 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 enclosure (2), which contains the 26 July 2021 advisory opinion (AO) furnished by qualified mental health provider and the Petitioner's rebuttal to same.

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 on 22 August 1994. On 23 July 1996, the Petitioner underwent a psychological evaluation concerning his depression and suicidal ideation, and the findings were that his current symptoms stemmed from the personal consequences of his behavior. On 27 December 1996, the Petitioner received nonjudicial punishment for making a false statement relating to signing Marines out on leave. On 22 January 1997, the Petitioner received nonjudicial punishment for violating an order by breaking restriction. On 6 February 1997, the Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He waived his right to an administrative discharge board. On 18 February 1997, the discharge authority directed that the Petitioner be discharged with an other than honorable characterization of service, and he was issued an order to refrain from entering the Marine Corps [REDACTED]. On 25 February 1997, the Petitioner was discharged with an other than honorable characterization of service.

c. The Petitioner contends that he has been diagnosed with PTSD, and that the Department of Veterans Affairs (VA) has determined that his mental health condition, PTSD, is connected to his military service, and he contends this determination is persuasive evidence that his condition existed or was experienced during his service. In support of his petition, the Petitioner cites the "The Hagel Memo, The Carson Memo and The Kurta Memo," and he asks that the Board review his petition in light of these instructions.

d. As a result of the Petitioner's contention concerning his mental health condition, the Board sought the AO, which is included in enclosure (2). The AO is considered unfavorable. The AO reasoned:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition. Petitioner was diagnosed with personality disorder traits and was seeking assistance with coping skills (stress and anger issues)." In his application, he noted his purported trauma was a lightning strike in 1995 that

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resulted in undiagnosed PTSD; however, neither the mental health evaluation nor the letter from FSC indicated he suffered from any mental health condition. In contrast, Petitioner was primarily described as having a maladaptive pattern of blaming his misconduct and dysfunctional interpersonal relationships on external factors. Though post-service, he was diagnosed with PTSD, he has not submitted any information to link his post-service PTSD to his military misconduct. Moreover, misconduct such as falsifying leave papers is not the type of misconduct that would be mitigated by PTSD or any other mental health condition. In-service records, contemporary to Petitioner's military service did not provide evidence of behavioral changes or psychological symptoms indicative of PTSD or other diagnosable mental health condition.

e. The AO concluded, "it is my considered medical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition." The Petitioner submitted a rebuttal to the AO, which is contained in enclosure (2), in which he provided a timeline of traumatic events while he was on active duty, which he asserts supports his contention that the onset of his PTSD occurred while he was on active duty. The provider of the AO reviewed the Petitioner's rebuttal and determined it did not change the findings of the AO, stating "[t]here is no new or material evidence presented that would require a revision of the original AO. The AO stands as written." Enclosure (2).

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (e), as well as the materials in enclosure (2), the Board found that there was an injustice such that the Petitioner is entitled to relief. The Board acknowledged the findings of the AO, but determined that the Petitioner was entitled to relief based upon clemency and not based upon a mental health condition. The Board determined that the offenses for which the Petitioner was discharged, when balanced against the entirety of his service record, resulted in a harsh result. Specifically, the Petitioner's nonjudicial punishments for which he was discharged related to making a false statement relating to signing a Marine out on leave and for breaking restriction. The Board determined that these offenses, while serious, and when balanced against his overall service record, were not worthy of an other than honorable characterization of service. Rather, the Board determined that a General (Under Honorable Conditions) characterization of service was more appropriate.

Accordingly, based on a careful review of all of the facts presented, including the AO and rebuttal, the entirety of the Petitioner's official military personnel file, all of the references and enclosures, as well as all materials submitted by the Petitioner, the Board concludes that Petitioner is entitled to relief as follows.

RECOMMENDATION

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

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

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.

9/30/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]