



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

█
Docket No: 3066-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █ USMC,
XXX-XX █

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 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

Encl: (1) DD Form 149
(2) Advisory Opinion of 2 Aug 21

1. Pursuant to reference (a), Petitioner filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his other than honorable (OTH) discharge be upgraded due to a mental health condition. Enclosures (1) and (2) apply.

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 on the available evidence of record. 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

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regarding equity, injustice, or clemency determinations (Wilkie Memo). 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 in the Marine Corps and began a period of active duty on 8 May 1989.

c. During the period from February to March 1991, Petitioner was deployed during Operation Desert Storm to Kuwait and exposed to heavy atmospheric smoke.

d. On 8 December 1991, Petitioner was involved in an incident of aggravated assault, which resulted in a firearm being discharged.

e. On 11 January 1992, Petitioner was arrested by civilian authorities and charged with criminal damage in excess of \$500, disorderly conduct, communicating threats, criminal trespassing, and obstruction of justice by refusing to provide identification and giving false information.

f. On 22 January 1992, Petitioner received nonjudicial punishment (NJP) for consuming alcohol while under the age of 21.

g. On 27 January 1992, Petitioner was notified of administrative discharge action for misconduct due to commission of a serious offense. After being afforded his procedural rights, Petitioner elected to have his case heard before an administrative discharge board (ADB).

h. On 10 February 1992, Petitioner received NJP for violating restriction by leaving the barracks.

i. On 11 March 1992, an ADB found that Petitioner committed misconduct and recommended his separation from the Marine Corps with an other than honorable (OTH) characterization of service.

j. On 1 April 1992, Petitioner's case was forwarded to the separation authority concurring with the ADB's findings and recommendation.

k. On 23 April 1992, the separation authority directed Petitioner's discharge from the Marine Corps by reason of misconduct due to commission of a serious offense.

l. On 1 May 1992, Petitioner was discharged from the Marine Corps with an OTH characterization of service.

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m. With his application, Petitioner stated that he was discharged without a diagnosis for PTSD, depression, and Alcoholism. Petitioner states that he was struggling with PTSD and Alcoholism, but never received the help he needed. He asserts that after seeing a counselor, he became aware of the problems he endured over the years. He was on the lead vehicle going through a minefield and in the process, the vehicle hit a bar mine and was stuck in the minefield taking on fire. Petitioner further asserts that he did not know how or what happened to him, but knew something had changed. He found himself drinking every day for no reason. He went home on leave and his family immediately noticed a difference in him, and his family members were concerned about his drinking and depression. Petitioner states that he has quit drinking, started going to behavioral health, attends group meetings, and is doing well with his recovery and happy with his progress.

n. Enclosure (2) is the AO furnished to the Board by a qualified mental health provider. The AO states in part that although it cannot be said with absolute certainty, based on the available evidence, there is evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and his misconduct may be mitigated by his mental health condition.

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 this policy.

In this regard, the Board noted Petitioner's misconduct, and does not condone his actions. However, based upon Petitioner's overall record, in light of enclosure (2), and given our current understanding of mental health conditions, the Board determined that relief should be granted in the form of changing his characterization of service 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 1 May 1992; he received an "General (under honorable conditions)" characterization of service.

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

No further action be granted.

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.

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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.

9/30/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]