



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

[REDACTED]
Docket No: 3713-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
XXX-XX-[REDACTED] USMC

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Case summary
(3) Advisory opinion of 24 March 2022

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 by changing his Bad Conduct Discharge (BCD) to either a medical discharge or to an Honorable discharge. Enclosure (2) applies.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 May 2022, 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). Additionally, the Board considered enclosure (3), the 24 March 2022 advisory opinion (AO) furnished by a qualified mental health provider.

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. The Petitioner enlisted in the Marine Corps and commenced a period of active duty in September 1987. While in training, he was seen in sick call on several occasions for various

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XXX-XX-[REDACTED] USMC

ailments. From 21 March 1988 to 21 April 1988, 20 June 1988 to 16 March 1989, and 17 March 1989 to 29 April 1989, Petitioner was in a period of unauthorized absence. During his periods of unauthorized absence, the Petitioner was evaluated by medical professionals. A civilian medical doctor prepared a letter dated 1 April 1988, explaining that his diagnostic impression of the Petitioner was adjustment disorder with mixed features and anxiety and depression. On 15 April 1988, the Petitioner was seen by a civilian psychologist who diagnosed the Petitioner with major depression, single episode, mood-incongruent psychotic features, and schizoid personality disorder. After returning to control by naval authorities, the Petitioner underwent 19-day in-hospitalization period at Naval Hospital [REDACTED] relating to mental health issues. On 21 June 1989, the Petitioner was convicted by a special court martial based solely on his periods of unauthorized absence. As part of his punishment, the Petitioner was awarded a BCD, which was executed on 11 March 1991.

c. The Petitioner contends that he was exhibiting symptoms of a mental health condition while he was on active duty, which he contends justifies his request for a disability discharge or, alternatively, an Honorable characterization of service. In support of his petition, the Petitioner appended several medical records, which were contemporaneous to his time in-service.

d. In light of the Petitioner's assertion of PTSD, the Board requested the enclosure (3) AO. The AO is considered unfavorable to Petitioner's request for a medical discharge, but is favorable to his request for mitigation of his misconduct due to his mental health conditions, explaining that:

In conclusion, the petitioner's UA/desertion appears to have resulted from a combination of prior to enlistment behavioral predisposition (which is non-compensable by regulation) and an Adjustment Disorder (which, unfortunately, was not compensable by Department of the Navy Physical Evaluation Board action at the time of the petitioner's discharge but did become a potentially compensable entity in 2013.

The AO also stated that, based on the the Petitioner's mental health condition, "consideration of mitigation is recommended."

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (e), as well as the enclosure (3) AO, the Board determined that the Petitioner is entitled to partial relief in the form of upgrading his discharge characterization to General (Under Honorable Conditions) as a matter of clemency. The Board concurred with the AO's finding that the Petitioner's misconduct while on active duty could be mitigated by his mental health condition while he was on active duty.

Notwithstanding its recommendation below, the Board determined that a Honorable discharge was not appropriate because the Board determined that the Petitioner's misconduct while on active duty was not fully mitigated by his mental health conditions. Further, the Board concluded that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
XXX-XX [REDACTED] USMC

inappropriate; a finding the Board was unable to support in Petitioner's case. The Board also observed that there was no evidence his mental health conditions were caused by his military service and there was also evidence the Petitioner had pre-existing mental health conditions, of which he was aware prior to his enlistment in the Marine Corps.

With respect to Petitioner's request for a medical discharge, the Board concurred with the AOs finding that the Petitioner failed to demonstrate that he suffered from any compensable unfitting condition during his service.

Accordingly, in view of all of the matters presented, and as noted above, the Board concluded that partial relief is warranted.

RECOMMENDATION

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

Petitioner be issued a new DD Form 214 reflecting that his characterization of service at the time of his discharge was General (Under Honorable Conditions).

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.

6/1/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]