



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

█
Docket No: 3859-21
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 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 19 August 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 naval record be corrected by upgrading his discharge characterization to honorable.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 1 November 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 stress disorder (PTSD) (Hagel Memo), the 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or traumatic brain injury (TBI) (Carson Memo), the 25 August 2017

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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 the reference (f) 19 August 2021 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.

b. The Petitioner enlisted in the Marine Corps and commenced a period of active duty on 19 November 1990. On 26 September 1991, he was placed in pretrial confinement following alleged violation of Article 134 for malingering through self injury with intent to avoid service. On 26 September 1991, the Petitioner underwent a psychiatric exam and was tentatively diagnosed with malingering. According to the psychiatrist, the Petitioner reportedly behaved strangely and was a constant concern for his supervisors, but after work, he was observed acting "normal" and social, and that he had been heard to say that he was going to get out of the Marine Corps by psychiatric means. On 7 October 1991, he submitted a request for discharge in lieu of trial by court-martial based on charges related to malingering, failing to render a salute, and failing to wear his chevrons. On 17 October 1991, his commanding officer recommended approval of the Petitioner's request that he be discharged with an other than honorable characterization of service. In the meantime, the Petitioner was convicted by a summary court-martial on 18 October 1991, for failing to go to his appointed place of duty, willfully disobeying an order on two occasions, and for feigning mental derangement. On 30 October 1991, the discharge authority approved the Petitioner's request for discharge and directed that the Petitioner be discharged under other than honorable conditions, and 13 November 1991, the Petitioner was so discharged.

c. In 1992, the Petitioner filed an application with the Naval Discharge Review Board (NDRB) where he contended that he suffered from schizophrenia while on active duty, he was unable to help himself and his disability was full blown, and his discharge was therefore inequitable and should be corrected. On 5 February 1993, the NDRB denied his application finding that a psychiatrist found that he was fully fit for duty at the time of his discharge.

d. The Petitioner contends that he was diagnosed with a mental health condition while still in service, and that his discharge under other honorable conditions was a result of his mental illness that affected his duties and relationships with his superiors. The Petitioner provided medical records in support of his petition.

e. In light of the Petitioner's assertion of a mental health condition, the Board requested the reference (f) AO. The AO is considered favorable to Petitioner, explaining:

Petitioner's application to the NDRB contained evidence of a thought disorder diagnosis as early as 14 November 1991 (a day after his discharge from military

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service) from the Department of Health Services, as well as a diagnosis of Schizophrenia, disorganized type and malingering from the Mental Health Center. Petitioner also provided more recent psychiatric notes, which confirmed a diagnosis of Schizophrenia. A note, dated 6 December 2017, stated Petitioner had 'been in treatment for over twenty years for psychotic illness.'

Although Petitioner stated he exaggerated symptoms and he denied behaviors reported by his coworkers, it should be considered persons who experience the onset of mental health symptoms will deny symptoms so they are not considered "crazy" or because they do not want to believe they are sick/different from others. The description of Petitioner's presentation at discharge also lends itself to a description of someone who may have been experiencing internal stimuli, rather than the provider's assumption Petitioner's responses were the result of poor intellect. Petitioner's diagnoses with a thought disorder so soon after his discharge, along with an additional dx of Schizophrenia lends credibility to his contention.

Furthermore, clinical notes provided indicated he received psychiatric care for over 20 years; a person who is malingering would likely be detected given the various providers he would encounter over 20 years of treatment.

The AO concluded, "it is my considered clinical opinion 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, and in view of references (b) through (f), the Board determined that the Petitioner is entitled to relief in the form of issuing him an honorable characterization of service. In reaching its decision, the Board concurred with the AO's finding that the Petitioner's misconduct while on active duty could be attributed to his mental health condition. The Board noted the finding of the AO, that it would be unlikely that the Petitioner would be malingering for 20 years. With respect to the relief to be provided, the Board observed that the Petitioner's proficiency and conduct marks were each 4.2, which, in the absence of other misconduct, would have rated the Petitioner an honorable discharge. Accordingly, in view of all of the matters presented, and given the mitigation of the Petitioner's misconduct as a result of his mental health condition, the Board concluded that the Petitioner's requested relief be granted plus additional relief as described below.

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 honorable, Secretarial Plenary Authority narrative reason for separation, MARCORSEPMAN 6214 authority for separation, JFF1 SPD code. His RE-4 reentry code shall be retained.

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That Petitioner be issued an honorable discharge certificate.

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.

11/15/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]