



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

█
Docket No: 4267-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █, 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 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 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 (Wilkie Memo)

Encl: (1) DD Form 149 with 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 to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 17 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 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 regarding equity, injustice, or

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

clemency determinations (Wilkie Memo). Additionally, the Board also considered an 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. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active service on 8 December 2003. Petitioner's pre-enlistment physical on 24 October 2003 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 2 October 2004 Petitioner received non-judicial punishment (NJP) for the wrongful use of marijuana. Petitioner did not appeal his NJP.

e. On 14 November 2004 Petitioner was wounded in action while conducting combat operations in the Al Anbar Province in Iraq. Petitioner would ultimately receive the Purple Heart Medal for his wounds.

f. On 2 June 2005 Petitioner tested positive again for marijuana. On or about 11 June 1995 Petitioner commenced a period of unauthorized absence (UA) that terminated after twenty-five days on 6 July 2005 with his return to military authorities.

g. On 18 August 2005 Petitioner was convicted at a Summary Court-Martial of his UA and marijuana use. Petitioner was sentenced to confinement for thirty days and forfeitures of pay.

h. On 15 September 2005 the Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to drug abuse. Petitioner waived his rights to consult with counsel and to request an administrative separation board. On 11 October 2005 the Petitioner refused a Medical Officer's evaluation for dependency prior to discharge. Ultimately, on 9 November 2005 the Petitioner was discharged from the Marine Corps for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4B reenlistment code.

i. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 3.12 in conduct as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

j. In short, Petitioner contended that he was suffering from PTSD due to his combat deployment to Iraq in support of Operation Iraqi Freedom (OIF). The Petitioner outlined how he was wounded in action and described how his mental health challenges continued post-service.

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

The Petitioner argued that the Board must view his mental health condition as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

k. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 26 November 2021. The Ph.D. determined that Petitioner exhibited some behaviors indicative of a mental health condition that would mitigate some, but not all of his misconduct. The Ph.D. noted that his drug-related misconduct in September/October of 2004 was prior to his purported trauma. The Ph.D. concluded by opining that available objective evidence indicated Petitioner exhibited behaviors associated with PTSD on active duty, but that only some of his misconduct may be mitigated by PTSD.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's PTSD mitigated the misconduct used to characterize his original OTH. The Board concluded that the Petitioner's PTSD-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's post-deployment misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions especially given his combat service, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board also noted that some of the Petitioner's misconduct occurred prior to his OIF deployment and thus would not be mitigated by any mental health conditions or symptoms. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

The Board also observed Petitioner's overall active duty trait average in conduct (proper military behavior) during his enlistment did not meet the Marine Corps' required minimum trait average in that category for a fully honorable characterization of service. Lastly, in light of the Wilkie Memo, and while not necessarily excusing or condoning the Petitioner's misconduct, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a discharge upgrade to GEN and no higher.

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

The Board did not find a material error or injustice with the Petitioner's RE-4B reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

That 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 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/14/2022

[REDACTED]

Executive Director

[REDACTED]