



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

█
Docket No: 4716-21

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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 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 22 October 2021

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, or alternatively general (under honorable conditions), and changing his narrative reason for separation to Secretarial Authority.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 29 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 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 enclosure (3) 22 October 2021 advisory opinion (AO) furnished by a qualified mental health provider.

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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 18 October 1989. From 30 August 1990 to 31 December 1990, and from 1 January 1991 to 11 February 1991, the Petitioner deployed to [REDACTED] in support of [REDACTED]. During his deployment, he earned the Combat Action Ribbon, among other awards. From 12 February 1991 to 21 March 1991, the Petitioner was deployed with [REDACTED] in [REDACTED]. On 8 July 1991, the Petitioner received nonjudicial punishment for an eight day period of unauthorized absence. On 5 May 1992, the Petitioner was formally counseled for making mocking gestures to a noncommissioned officer and for passing bad checks. On 11 June 1992, the Petitioner was formally counseled concerning his failure to go to evening formation. On 28 August 1992, the Petitioner was formally counseled concerning his frequent unauthorized absences. On 5 November 1992, the Petitioner was convicted by a summary court-martial for a 29 day period of unauthorized absence. On 12 December 1992, the Petitioner received nonjudicial punishment for a period of 12 days. On 9 February 1993, the Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He waived his right to an administrative board. On 26 February 1993, the Petitioner's commanding officer recommended that he be discharged with an other than honorable characterization of service. On 16 March 1993, the discharge authority directed that the Petitioner be discharged with an other than honorable characterization of service, and on 16 April 1993, he was so discharged.

c. In 2014, the Petitioner filed a petition with this Board requesting that his discharge be upgraded based on his record of service. In this prior petition, he did not contend that he suffered from undiagnosed PTSD. On 3 March 2015, this Board denied his petition, reasoning that his record of misconduct outweighed his record of service and his desire to upgrade his discharge.

d. The Petitioner contends that he had undiagnosed PTSD during his service, which onset while he was serving in support of Operations [REDACTED], where he witnessed the death of fellow Marines and was exposed to burning oil. In support of his petition, the Petitioner included medical records, including materials from the U.S. Department of Veterans' Affairs.

e. In light of the Petitioner's assertion of PTSD, the Board requested the enclosure (3) AO. The AO is considered favorable to Petitioner, explaining that:

There is evidence in the Petitioner's service record that he was diagnosed with an adjustment disorder by the medical officer and diagnosed with a personality disorder by a military mental health provider. Petitioner submitted a post-service medical report that lists a diagnosis of PTSD, attributed to combat deployment. When considering the timeline of events, all of the Petitioner's misconduct

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occurred after the return from combat and it is possible to consider that the petitioner's poor attitude, UA, and homicidal ideation were behavioral indicators of symptoms of PTSD, avoidance and irritability.

The AO concluded that, based on the available evidence, "it is my considered medical opinion that there is postservice evidence that the Petitioner may have incurred PTSD during military service, and there is evidence that his misconduct could be attributed to symptoms of PTSD."

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). In reaching its decision, the Board concurred with the AO's finding that some of the Petitioner's misconduct while on active duty could be mitigated by his experience of PTSD. In reaching its conclusion, the Board determined that not all of the misconduct that the Petitioner engaged in while on active duty was mitigated by his mental health condition. The Board observed that, in addition to his two nonjudicial punishments and conviction by summary court-martial, the Petitioner was formally counseled on at least three occasions for several instances of misconduct, including an instance of passing a bad check, and his conduct marks were below 4.0. The Board also observed that the Petitioner did not provide materials describing his post-service conduct and development, and thus, the Board did not have a basis to apply the factors set forth in reference (e) Wilkie Memo, regarding post-service clemency. Accordingly, the Board balanced the Petitioner's contentions, and the finding of the AO, with the several charges of misconduct for which he was discharged, and determined that an upgrade to a general (under honorable conditions) characterization was appropriate.

Accordingly, in view of all of the matters presented, and as noted above, the Board concluded that the Petitioner's requested relief be partially granted.

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

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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.

12/14/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]