



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

█
Docket No: 4944-21
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 (NR20210004944)
(2) Case summary
(3) Advisory Opinion dtd 16 Nov 21

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting an upgrade to his discharge characterization from other than honorable to honorable. Enclosures (1) through (3), and references (a) through (e) apply.

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, applicable statutes, regulations, and policies, to include references (b) through (e), and the relevant Advisory Opinion dated 16 November 2021.

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 interest of justice to waive the statute of limitations and review the application on its merits.

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

c. Petitioner enlisted in the Marine Corps and began a period a period of active duty on 10 April 2001.

d. On 3 January 2003, Petitioner was counseled for failure to be at his appointed place of duty by failing to be at his dental appointment.

e. Petitioner deployed overseas from August 2003 through January 2004, earning in part the Combat Action Ribbon (Iraq), the Global War on Terrorism Expeditionary Medal, and the Presidential Unit Citation- Navy.

f. On 10 May 2004, Petitioner received nonjudicial punishment (NJP) for violating Article 92 (failure to obey the order to move into HP 503 barracks, an order which was his duty to obey, by staying out in town with a lance corporal).

g. On 26 January 2005, Commanding Officer, Headquarters and Service Company recommended that Petitioner be administratively separated due to commission of a serious offense as supported by an upcoming summary court martial for distributing alcoholic beverages to a person under the age of 21 and witnessing an assault and doing nothing about it. On 3 February 2005, Petitioner was found guilty of two specifications of violating Article 92 and one specification of Article 134.

h. On 3 February 2005, Petitioner was notified of administrative separation proceedings against him due to a pattern of misconduct. Petitioner waived his right to appear before an administrative separation board. On 4 February 2005, Petitioner's Commanding Officer recommended he receive an other than honorable discharge.

i. On 23 February 2005, Petitioner received a supplemental notice of administrative separation proceedings due to drug abuse. On 25 February 2005, Petitioner received NJP for wrongful use of a controlled substance (marijuana).

j. On 15 March 2005, Petitioner was discharged from the Marine Corps on the basis of Misconduct, and received an other than honorable characterization of service and a reentry (RE) code of RE-4.

k. In his application to the Board, Petitioner requested an upgrade from an other than honorable discharge to a general discharge. Petitioner states that he was an outstanding Marine who served his country honorably. He states that his discharge was due to Post Traumatic Stress Disorder (PTSD). Petitioner states that he has been diagnosed with PTSD through Veterans Affairs, and that although he thought the diagnosis would give him all of his benefits, the diagnosis has not. Petitioner provides supporting documents, to include detailed treatment records and a 16 June 2020 Veterans Affairs decision rating that Petitioner is service-connected for treatment purposes only for PTSD.

l. As part of the review process, a Licensed Clinical Psychologist reviewed Petitioner's available records and issued an Advisory Opinion that considered Petitioner's assertion that his PTSD diagnosis may have mitigated the misconduct that resulted in his other than honorable

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

discharge. The Advisory Opinion noted that Petitioner provided Veterans Affairs treatment records which indicate that Petitioner began to struggle with anger and irritability in 2005. The Advisory Opinion stated that Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition, however his record showed several markers of behavioral changes indicative of a mental health condition after returning from deployment in 2004. The Advisory Opinion concluded that there is sufficient evidence that Petitioner exhibited behaviors associated with PTSD during his military service. Although his PTSD would not mitigate misconduct prior to August 2003, nor would it mitigate failure to maintain housing in the barracks, providing alcohol to underage Marines, and not reporting an assault that he witnessed, the Advisory Opinion found that Petitioner's PTSD may mitigate his misconduct of being drunk and disorderly, failure to obey an order, disrespect, and marijuana use.

m. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case including in accordance with the Wilkie Memo, the Hagel Memo, and the Kurta Memo. These included, but were not limited to Petitioner's contention that he suffered from PTSD which mitigated the misconduct for which he was administratively separated.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of references (b) and (e), the Board substantively concurred with the determination of the Advisory Opinion. The Board found that Petitioner's PTSD mitigated his in-service misconduct in part, and that he is entitled to an upgrade to a general characterization of service. The Board found that given the misconduct of failure to go to his appointed place of duty, failure to move in the barracks, and distribution of alcohol to underage individuals, which do not appear to have a nexus to PTSD, Petitioner is not entitled to an honorable discharge.

However, in consideration of the mitigating mental health condition of PTSD and noting the favorable contributions Petitioner made to the Marine Corps as evidenced by his entitlement to awards, the Board found that Petitioner's discharge should be upgraded to a general characterization of service, and that he should receive a change to his narrative reason for separation with corresponding changes to his separation authority and SPD code.

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

RECOMMENDATION:

That Petitioner be issued a new DD Form 214 to show that on 15 March 2005, upon his discharge from the Marine Corps, Petitioner was issued a general (under honorable conditions) discharge by reason of "Secretarial Authority," and that his corresponding SPD code is "JFF1" and his separation authority is "MARCORSEPMAN PAR 6214."

That no further corrective action be taken.

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

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 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.

1/10/2022

[REDACTED]

Executive Director
[REDACTED]