



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

[REDACTED]
Docket No: 5522-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USMC, [REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) [REDACTED] Memo of 3 Sep 14 (Hagel Memo)
(c) [REDACTED] Memo of 24 Feb 16 (Carson Memo)
(d) [REDACTED] Memo of 25 Aug 17 (Kurta Memo)
(e) [REDACTED] Memo of 25 Jul 2018 (Wilkie memo)

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 214 of 27 Jun 1975
(3) Official Military Personnel File (OMPF)
(4) Civilian Psychologist of 17 Mar 1975
(5) 1994 BCNR
(6) 2007 BCNR
(7) Advisory Opinion of 15 Dec 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 characterization of service to honorable.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 29 December 2021. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. 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 references (b through e).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty on 3 June 1974. See enclosure (2).

c. On 21 September 1974, Petitioner commenced a period of unauthorized absence, surrendering to military authorities on 8 November 1974. On 27 November 1974, he commenced another period of unauthorized absence, surrendering to military authorities on 3 December 1974. On 6 December 1974, he received nonjudicial punishment for these two periods of unauthorized absence. On 12 December 1974, he received nonjudicial punishment for failing to go to his appointed place of duty. Petitioner engaged in another period of unauthorized absence from 16 December 1974 to 13 January 1975, and again from 6 February 1975 to 17 March 1975. See enclosure (3).

d. On 17 March 1975, Petitioner provided the report of a civilian psychologist, with whom he met while he was absent from service. According to the psychologist, Petitioner was “anxious and depressed” about his military service and “frightened” about possible consequences of his unauthorized absence. The psychologist described him as “rather immature, lacking good judgment” and found that he was “essentially within normal psychological limits” The psychologist concluded by diagnosing Petitioner with a personality disorder. See enclosure (4).

e. On 20 May 1975, Petitioner’s commanding officer recommended that he be administratively discharged, and the recommendation for discharge stated that Petitioner was found to have a personality disorder that was not service connected. On 25 May 1975, Petitioner was notified of the initiation of administrative separation processing and he waived his right to an administrative separation board. Petitioner’s record reflects that he was represented by civilian counsel who was in correspondence with Petitioner’s command during this period of time. On 31 May 1975, Petitioner commenced another period of unauthorized absence. On 11 June 1975, Petitioner’s commanding general recommended that Petitioner be discharged with an undesirable discharge. On 26 June 1975, Petitioner surrendered from his absence. Petitioner was not subjected to any disciplinary actions as a result of his final three periods of unauthorized absence, and he was administratively discharged on 27 June 1975. See enclosure (3).

f. In 1994, Petitioner filed a petition with this Board asserting, among other things, that he had PTSD. On 9 November 1995, the Board denied this petition. In 2007, Petitioner filed another petition with this Board, asserting that he had bipolar disorder instead of PTSD. On 7 March 2008, this Board denied this petition. See enclosures (5-6).

g. In connection with Petitioner’s assertion that he suffered from a mental health condition, the Board requested, and reviewed, the advisory opinion (AO); enclosure (7). The AO reviewed Petitioner’s service record as well as his petition and the matters that he submitted. According to the AO:

Petitioner provided a letter from his provider at the VA, dated 7 June 2018, who stated Petitioner had received treatment since May of 2005 and had been diagnosed with Bipolar Disorder and PTSD. The provider further opined, ‘...there is a much greater chance than not...[Petitioner] had Bipolar Affective Disorder while in the Marine Corps and that symptoms of that disorder...contributed to his discharge...’

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Petitioner's OMPF, and the evidence submitted by him, presented a complex picture of Petitioner and his behaviors. Petitioner was consistently described, in records contemporary to his service, as a person with low self-worth, poor judgment, and impulsivity. The difficulty is distinguishing what behaviors may be attributed to PTSD or Bipolar Disorder symptoms or poor coping skills. For example, Petitioner did not go UA until his request for leave was denied, which indicated it was not an impulsive decision and instead poor coping skills. In contrast, prodromal symptoms of a bipolar disorder (symptoms that emerge before diagnostically specific signs) include poor judgment, poor emotional tolerance, and poor impulse control. Petitioner's decision to continue to go UA, despite the resulting negative consequences, in conjunction with his decision to join the USMC, which has convincingly been described as an impulsive decision are the types of behaviors one suffering from Bipolar Disorder may engage in. Petitioner's continued misconduct appears to be more in line with prodromal Bipolar Disorder, which was likely exacerbated by his anxiety (from the demands of military service) coupled with his financial and family difficulties. His post-service diagnosis of Bipolar Disorder lends credibility to this contention.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with a mental health condition (Bipolar Disorder) during his military service and some of his misconduct may be mitigated by his mental health condition."

BOARD MAJORITY CONCLUSION

The Board majority, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request did not warrant relief.

The Board majority carefully considered whether the interests of justice warrant relief in Petitioner's case in accordance with references (b through e). Petitioner contends in his petition that his discharge was unjust because his minor infractions and his unauthorized absences were a direct result of his undiagnosed and untreated PTSD. Petitioner further stated that his service-related disabilities rendered him unable to use sound judgment, and had his PTSD and bipolar disorder been properly diagnosed he would have been honorably discharged under current policy and procedures.

Based upon its review, the Board majority concluded the potentially mitigating factors that Petitioner raised were insufficient to warrant relief. With respect to his contention relating to a mental health condition, the Board majority acknowledged the findings of the AO and noted that the AO found that some, but not all, of his misconduct may be mitigated by his mental health condition. Under his circumstances, the Board majority was unable to find that Petitioner's mental health condition mitigated all of his misconduct. Correspondence contained in his official military personnel file demonstrates that, at the time leading to his discharge, Petitioner was represented by counsel and he had hired a psychologist. The record also reveals that he desired to be discharged from the Marine Corps and he was willing to accept an undesirable discharge to do so. Petitioner's command exercised forbearance by not subjecting Petitioner to a court-martial or nonjudicial punishment for his final three lengthy periods of unauthorized

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absence, instead allowing him to be administratively discharged. The Board majority further observed that, despite being actively represented by an attorney and being treated by a civilian mental health professional, Petitioner nevertheless persisted in engaging in misconduct until the day before he was discharged. Under these circumstances, the Board majority was unable to find an error in Petitioner's discharge and the assignment of an other than honorable characterization of service.

BOARD MAJORITY RECOMMENDATION

In view of the above, the Board majority recommends no relief.

BOARD MINORITY CONCLUSION

Notwithstanding the Board majority's conclusion, the Board minority believed to the contrary, Petitioner's misconduct was impacted by his mental health condition. The Board minority carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b through e). Upon review and consideration of all the evidence of record, the Board minority finds the existence of an injustice warranting partial relief.

In this regard, the Board minority concurred with the advisory opinion issued in Petitioner's case by the Board's Mental Health Professional. Specifically, the preponderance of the evidence supports upgrading Petitioner's characterization of service to General (Under Honorable Conditions). After applying liberal consideration to Petitioner's case, the Board minority believed a nexus exists between his mental health condition and his misconduct that merits some mitigation in determining an appropriate characterization of service. In the Board minority opinion, an Honorable characterization of service was not supported by all evidence based on the number of incidents of misconduct Petitioner committed during his relatively brief period of active duty. While the Board minority felt the mitigation created by his mental health condition required some level of relief, it was insufficient to support granting an Honorable characterization of service. Accordingly, the Board minority recommend that Petitioner's characterization of service should be upgraded to General (Under Honorable Conditions).

BOARD MINORITY RECOMMENDATION

Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty to show he was discharged with a General (Under Honorable Conditions) characterization of service.

A copy of this report of proceedings will be filed in Petitioner's naval record.

No further action will be taken to 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.

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5. I am acting on behalf of the Executive Director subject to her recusal from the post-board approval of the Board's findings due to her participation on the Board and her express delegation. As such, the foregoing action of the Board is submitted for your review and action based on special delegation by the Executive Director.

1/21/2022

[REDACTED]

Deputy Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Deny Relief)

Reviewed and Approved Board Minority (General (Under Honorable Conditions)
Characterization of Service))

Reviewed and Approved Petitioner's Request (Honorable Characterization of Service)

1/31/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]