



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

██████████
Docket No: 5740-21
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) 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 with attachments

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 reflect an honorable characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 19 November 2021, and pursuant to its regulations, determined 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 clemency determinations (Wilkie Memo). Additionally, the Board considered the 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.

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c. Petitioner entered a period of active duty in the Marine Corps on 6 September 1988 at the age of 19. He served as an anti-tank assaultman with the military occupation specialty code of 0351.

d. On 28 July 1989 Petitioner received nonjudicial punishment (NJP) for two specifications of breaking a lawful order by drinking underage in violation of Article 92, Uniform Code of Military Justice (UCMJ).

e. Petitioner received a second NJP on 21 March 1990 for a three day period of unauthorized absence (UA) in violation of Article 86, UCMJ.

f. On 23 August 1990 Petitioner received a third NJP for a four and a half hour period of UA, and breaking a lawful order by underage drinking in violation of Articles 86 and 92, UCMJ.

g. Petitioner participated in [REDACTED] from 3 September 1990 to 21 March 1991. Petitioner's service history is significant for having been awarded the Southwest Asian Service Medal with one star and the Combat Action Ribbon.

h. Petitioner received a fourth NJP on 4 April 1991 for failure to go to his appointed place of duty; disobeying the lawful order of a captain; being under the influence of alcohol while on duty; and being incapacitated for duty in violation of Articles 86, 92, 112, and 134, UCMJ.

i. Petitioner was advised of administrative separation processing on 9 May 1991 by reason of misconduct due to minor disciplinary infractions. He consulted with counsel and waived an administrative discharge board (ADB).

j. Petitioner was discharged on 10 July 1991 with an other than honorable characterization of service.

k. Petitioner contends his service, to include receiving a Combat Action Ribbon during the Gulf War, should entitle him to an honorable discharge. Petitioner states he has PTSD from combat and that his personnel records indicate he should have received an "Under Honorable Conditions" discharge. Petitioner further contends that he was a good soldier but alcoholism was his enemy.

l. In support of his application, Petitioner provided a Department of Veterans Affairs (VA) Compensation and Pension Examination report for an initial evaluation of PTSD dated 13 March 2007. Although the report is incomplete and does not provide a diagnosis, it does document Petitioner's in-service combat exposure with several traumatic incidents. Specifically, the report indicates that Petitioner had three confirmed [REDACTED] tank kills; saw a Staff Sergeant get killed by a shell; shot and killed an [REDACTED] in a bunker; saw people who were dead and dying while he was walking into [REDACTED]; and that Petitioner fired his weapon at several people who were still alive.

m. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 14 October 2021. The AO concluded

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that there was sufficient indirect evidence to support Petitioner's contention of PTSD incurred as a result of combat during his military service but that only the misconduct occurring after his deployment to Operations [REDACTED] could be mitigated by his experience of PTSD.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief and that as a grant of clemency, his characterization of service should be corrected to reflect general (under honorable conditions).

The Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition at the time of discharge; however, found that a nexus only existed between the condition and misconduct as to the fourth NJP that Petitioner received after his deployment. The Board noted that after receiving his first NJP, Petitioner was assigned to a Level III Alcohol Abuse Rehabilitation inpatient program and successfully completed the treatment on 3 November 1989. Therefore, the Board, although not condoning the misconduct, did not consider Petitioner's first NJP to be egregious. However, Petitioner then received two more NJPs before deploying to Operation [REDACTED] and due to the repeated misconduct after completing treatment, found no inequity in the characterization of service given to Petitioner at the time of discharge. In addition to applying liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his conduct, the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, Petitioner's combat history; the VA's detailed report describing Petitioner's traumatic incidents; relative youth and immaturity at the time of his misconduct; nonviolent nature of the misconduct; and the passage of time of over 30 years since Petitioner's discharge. Additionally, in its deliberations the Board noted that Petitioner's entire chain of command recommended that he be separated with a general (under honorable conditions) characterization of service. In particular, the Board found it compelling that Petitioner's notification of separation proceedings stated that his Battalion Commander was recommending a general discharge and that after receiving his notification and consulting with counsel, Petitioner waived an ADB. Furthermore, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason for separation, separation authority, and separation code should be changed to "Secretarial Authority."

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (Under Honorable Conditions)," that the narrative reason for his separation was "Secretarial Authority," that his separation authority was "MARCORSEPMAN 6214," and that his separation code was "JFF1." Petitioner's reentry code shall remain the same.

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That no further corrective action should be taken.

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.

12/15/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]