



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

[REDACTED]
Docket No: 6073-21
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. 1552
(b) Rebuttal Review by Physician Advisor of 19 Aug 22

Encl: (1) DD Form 149 w/attachments
(2) Physician Advisor ltr of 12 Aug 22
(3) Petitioner's Rebuttal to Advisory Opinion of 14 Aug 22

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 remove alleged false entries in his record, change his narrative reason for separation to disability, or be reinstated to active service with back pay.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 October 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of naval records, and applicable statutes, regulations and policies. Enclosures (2) and (3) consist of an advisory opinion (AO) of a qualified medical professional and Petitioner's rebuttal to the AO, respectively.

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Marine Corps and commenced a period of active duty on 10 August 2010. As set forth in more detail in enclosure (2), during the course of his enlistment, and prior to any deployment, Petitioner was evaluated by various medical providers for mental health concerns. For example, Petitioner reported that he believed he had post-traumatic stress disorder (PTSD) as a result of his friend hanging himself prior to Petitioner joining the Marine Corps. Petitioner also reported that he felt trauma symptoms as a result of a breakup with his girlfriend. On another occasion, he stated that he reported to his work center and he was "acting differently," and that he was feeling "out of it."

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

c. From 16 July 2013 to 2 February 2014, Petitioner deployed in support of Operation Enduring Freedom, [REDACTED]. Later, he deployed to Qatar beginning on 2 August 2014. On 28 August 2014, he was medically evacuated (medevac) from [REDACTED] Regional Medical Center, and, thereafter, to [REDACTED] for mental health evaluation and disposition. According to the AO's review of Petitioner's medical records, his medevac diagnosis was Dissociative Disorder, Not Otherwise Specified (NOS) based on his report of "hallucinations and feeling as if he is living in a dream state with possible black-out sensation." After further evaluation, his diagnosis was changed to Anxiety Disorder, NOS on 3 September 2014. On 5 September 2014, he was noted to be fatigued and complained of nausea in flight and received anti-nausea medications.

d. After further evaluations, on 17 September 2014, Petitioner was diagnosed by a medical provider with a Personality Disorder and recommended for administrative separation. On 6 October 2014, he was interviewed concerning his proposed administrative separation by his Sergeant Major. His Personality Disorder diagnosis was explained to him and described in two counseling entries dated 21 October 2014 and 29 October 2014. Thereafter, he was notified of the initiation of administrative separation processing and your rights in connection therewith. On 27 January 2015, Petitioner was discharged due to a Personality Disorder with an RE-3P (waivable) reentry code. He provided in his enclosure (1) petition, a treatment note from the U.S. Department of Veterans Affairs, dated 7 December 2018, diagnosing him with unspecified anxiety disorder with features of PTSD, Generalized Anxiety Disorder and somatization, and residuals of traumatic brain injury.

e. In his petition to this Board, Petitioner requests the removal of what he calls "false entries" in his service record, that his Personality Disorder discharge should be changed, and that he should be considered for a medical retirement or reinstatement with back pay. In support of his request, Petitioner contends that the record reflects he was unlawfully discharged and that he was being punished for reporting a mental health concern.

f. To assist it in reviewing the Petitioner's petition, the Board also reviewed the enclosure (2) AO. According to the AO:

in summary, the preponderance of objective clinical evidence provides insufficient support for Petitioner's contention of unfitness at the time of his discharge and request for placement on the disability retirement list. This is due to the presence of objective evidence that the applicant's duty performance was judged to have been adequate at the time of separation. Had referral to the PEB occurred, a finding of fit to continue naval service would have been the likely result. Should any further evidence surface supporting unfitness or a disability retirement, resubmission would be appropriate.

g. Petitioner was provided a copy of the AO, and he provided the enclosure (3) rebuttal, which included the provision of additional documents. In his rebuttal, Petitioner asserted that he made it clear that his discharge was unlawful. He also argued that he would have been found unfit eventually without regard to his fitness at the time of his separation. Finally, Petitioner stated that if he were found to be fit, then he asks to be immediately reinstated to the Marine

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

Corps, and that any mention of Personality Disorder be removed from his records as not only is it not supported by evidence, but there is also counter evidence.

h. Petitioner's rebuttal was provided to the preparer of the original AO, and, after reviewing and discussing the rebuttal and its additional documents, stated that, "there was no additional evidence in support of a finding of unfit for service at the time of his separation, nor that provided additional information as to the Personality Disorder diagnosis and subsequent discharge for unsuitability for service. Therefore the original AO stands as written." Reference (b).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined that the interests of justice supports changing Petitioner's narrative reason for separation to Secretarial Authority to eliminate any stigma associated with Personality Disorder being listed on his Certificate of Release or Discharge from Active Duty (DD Form 214) and to change his Separation Program Designator (SPD) code accordingly.

Despite the Board's recommendation to grant partial relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support changing Petitioner's narrative reason for separation to disability. Specifically, the Board found insufficient evidence to contradict the Personality Disorder diagnosis that formed the basis for Petitioner's discharge from the Marine Corps, nor did the Board find support for Petitioner's contention that he had an unfitting condition as that phrase is used in the disability evaluation system.

Additionally, the Board found no error or injustice in Petitioner's discharge or the rationale for his discharge. Thus, the Board found no basis to support the Petitioner's request for a medical retirement, back pay, or immediate reinstatement. With respect to Petitioner's request for reinstatement, the Board observed that Petitioner received an RE-3P reentry code, thus, the Board understands that should he seek to reenlist in the Marine Corps or another branch of service, it is likely that he would need to submit a request for a medical waiver. That process is not within the purview of this Board. Accordingly, in light of the foregoing, with the exception of the foregoing change to his DD Form 214 concerning his Personality Disorder narrative reason for separation and SPD code, the Board denied the remainder of the relief requested by the Petitioner.

RECOMMENDATION

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

Petitioner's naval record be corrected by changing Petitioner's narrative reason for separation to "Secretarial Authority," his SPD code to "JFF1," and his separation authority to "MARCORSEP 6214." Petitioner will be issued a new DD Form 214 consistent with this change.

And no other changes.

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

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.

11/7/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]