



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

█
Docket No: 6349-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USMC,
XXX-XX-█

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Case summary

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 upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 7 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, 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

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clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by 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, the Board determined that it was in the interests of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active service on 20 October 2008. Petitioner's enlistment physical on 24 June 2008 and self-reported medical history noted no neurologic or psychiatric conditions or symptoms.

d. On 23 July 2009 Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) and for disobeying a lawful order. Petitioner did not appeal his NJP. On the same day Petitioner received a "Page 11" counseling warning documenting the NJP. Petitioner did not make a Page 11 rebuttal statement.

e. On 10 August 2012 Petitioner received NJP for UA lasting twenty days. When Petitioner's UA originally terminated on 7 August 2012, Petitioner provided a urinalysis sample that tested positive for marijuana. On 6 September 2012 Petitioner received NJP for the wrongful use of marijuana and disobeying a lawful order. As part of a Disposition Agreement, on 31 August 2012 Petitioner agreed to plead guilty at NJP for his marijuana use and waive his administrative separation board in exchange for the command not preferring court-martial charges.

f. On 19 September 2012 Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to drug abuse and misconduct due to a pattern of misconduct. Petitioner waived his rights to consult with counsel, submit written rebuttal statements to the separation authority, and to request an administrative separation board. Ultimately, on 4 October 2012 Petitioner was discharged from the Marine Corps for drug abuse with an other than honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

g. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 3.2. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct (proper military behavior), to be eligible and considered for a fully honorable characterization of service.

h. In short, Petitioner contended that he was suffering from service-connected PTSD. The Petitioner stated his PTSD symptoms started while he was part of a Quick Reaction Force in the [REDACTED]. The Petitioner stated he was tasked with transporting dead and injured coalition

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soldiers to on-base medical facilities. The Petitioner contended that such experiences adversely affected him greatly at the time. The Petitioner also contended that once he returned stateside his PTSD and anxiety symptoms increased dramatically. The Petitioner argued that the Board must view his mental health conditions as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

i. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO dated 18 November 2021. The Ph.D. initially observed that Petitioner's in-service medical records did contain direct evidence of a mental health diagnosis as well as psychological/behavioral changes indicating a mental health condition. The Ph.D. noted that Petitioner's post-service medical records further supported the service-connected diagnoses of PTSD and an anxiety disorder. The Ph.D. also noted that the majority of Petitioner's disciplinary actions occurred after his diagnoses and attempts to obtain symptom relief. The Ph.D. determined that Petitioner's UA and drug use was likely attributed to his effort to deal with his diagnosed anxiety disorder/PTSD symptoms. The Ph.D. concluded by opining that there was sufficient evidence Petitioner exhibited behaviors associated with PTSD on active duty and his PTSD may mitigate his misconduct. The Ph.D. concluded, however, that Petitioner's PTSD would not mitigate his August 2009 misconduct given that it happened prior to his traumatic experiences.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's PTSD mitigated the misconduct used to characterize his service. The Board concluded that the Petitioner's PTSD-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's post-deployment misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions) (GEN)" is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board noted that some of Petitioner's misconduct occurred before his deployment. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally

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responsible for his conduct or that he should not be held accountable for his actions.

The Board also observed Petitioner's overall active duty trait average in conduct (proper military behavior) during his enlistment did not meet the Marine Corps' required minimum trait average in that category for a fully honorable characterization of service. Lastly, in light of the Wilkie Memo, and while not necessarily excusing or endorsing the Petitioner's UA and drug use, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a discharge upgrade to GEN and no higher.

Notwithstanding the discharge upgrade recommendation, the Board did not find a material error or injustice with the Petitioner's narrative reason for separation and reentry code. The Board concluded the Petitioner was originally assigned the correct narrative reason and reentry code based on the totality of his circumstances, and that such narrative reason for separation and reentry code were proper and in compliance with all Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

In view of the foregoing, the Board Majority finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," and that no other changes be made to the DD Form 214.

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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 Regulations, 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.

12/20/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]