



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

██████████
Docket No: 6858-21
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-██████████ USMCR

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 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 enclosures
(2) Advisory Opinion of 17 Apr 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 pertaining to his last period of service be corrected to reflect an honorable characterization of service, narrative reason for separation as “Secretarial Authority” to include all corresponding codes, and reentry code as “RE-1.”

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner’s allegations of error and injustice on 6 May 2022 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.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX-XX-[REDACTED] USMCR

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted and entered a period of active duty in the Marine Corps Reserve on 18 May 1999. He completed his initial active duty training on 14 August 1999 and was discharged with an "uncharacterized" characterization of service.

d. Petitioner completed the Enlisted Supply Basic Course from [REDACTED] to [REDACTED] and Marine Combat Training from [REDACTED] to [REDACTED]. He served honorably during both periods of service.

e. Petitioner was mobilized and served in Iraq with [REDACTED] from 3 February 2003 to 20 October 2003. He served honorably during this period of service.

f. Petitioner tested positive for cannabinoids during a physical examination detected by urinalysis in April 2004.

g. Petitioner was admitted into a civilian partial hospitalization program due to suicidality from 12 April 2004 to 30 April 2004. During his treatment he stated, "I can't function at all" and experienced worsening depression, panic attacks, and Obsessive-Compulsive Disorder symptoms despite outpatient psychiatric treatment. The summary documented a history of untreated depression and panic attacks since age 11. The report also stated, "some symptoms of PTSD related to difficult combat experience in Iraq" and "complaints of flashes of images of death and violence." Petitioner was diagnosed with Major Depressive Disorder with Obsessive-Compulsive disorder.

h. Petitioner provided a letter from his medical provider to his command dated 15 April 2004 that stated, "Petitioner is a patient under my care for the treatment of major depression and PTSD disorder. His symptoms currently render him unfit for duty in military serve. Please excuse him from drill for the foreseeable future."

i. On 15 May 2004, Petitioner submitted a statement to his commanding officer prior to his nonjudicial punishment (NJP) that stated in pertinent part, "I confess to the premeditation of the charges presented against me and accept full responsibility for such a decision....I am greatly troubled by the events I witnessed in Operation Iraqi Freedom. My decision was drastic but I stand by it as my best and only recourse. My life has been shrouded by panic attacks, flashbacks, and a complete mental breakdown prior to this offense. While I wish to keep my medical condition as discreet as possible, I will authorize release of medical documentation from my three week partial hospitalization program.... I humbly request that a clinical psychologist and psychiatrist be consulted (by myself or the command) before my sentence is carried out. I have serious health concerns and only a specialist is suited for addressing these."

j. Petitioner received NJP, on 16 May 2004, for wrongful marijuana use in violation of Article 112a, Uniform Code of Military Justice.

k. On 19 May 2004, Petitioner was notified of administrative separation processing by reason of misconduct due to drug abuse as evidenced by positive urinalysis. He did not consult with counsel, waived an administrative discharge board, and submitted a written statement to his commanding officer. The statement indicated Petitioner has an audio/visual processing dysfunction in his brain due to being sexually molested when he was four years old. He stated he experiences audio hallucinations (“voices”) and impaired vision. He stated that due to events that occurred in Iraq, his condition was aggravated and upon his return, he attempted suicide due to a full blown psychotic episode. He further indicated that during late July/early August “very precise” rumors began to circulate that a Staff Sergeant and two Sergeants within his company took a light armored vehicle to a small town where they had sexual intercourse with female children aged 12-15 years old. He also stated that the Marines were denied food and water due to a supply issue. He further stated, “I enlisted to protect people, not to work with rapists. This guilt consumed me and almost destroyed my mind.” Petitioner requested that those matters be investigated.

l. Petitioner was admitted to a civilian psychiatric partial hospitalization program, from 7 March 2005 to 28 March 2005, and diagnosed with Major Depressive Disorder, recurrent, and Anxiety Disorder.

m. On 18 May 2005, Petitioner was discharged from his final period of service with an Other Than Honorable (OTH) characterization of service for misconduct with a RE-4B reentry code.

n. Petitioner contends that that while deployed to Iraq in 2003 he experienced several acts that caused him to develop PTSD and TBI, and that at the time of discharge he also suffered from Bipolar Disorder causing impaired judgment and the inability to understand the consequences of his decisions. He contends the following traumatic acts occurred: he was almost shot by a tracer which narrowly missed his head, he had knowledge of alleged prostitution and rapes of local minors by other enlisted Marines in his company, his close friend and fellow Marine Lance Corporal was killed in action, he recounts a First Sergeant describing how he mutilated a corpse, he had to refuse medical aid to a young Iraqi girl who was stripped naked and bloodied, he witnessed deceased bodies along mission routes, he had to be medically evacuated after experiencing spasms and throwing up from having severe kidney stones, and he nearly died after having his lungs filled with intravenous fluid while in a military hospital being treated for kidney stones.

o. In support of his application, Petitioner provided four character references from Marines he served with while deployed to Iraq.

p. As part of the Board’s review, a qualified mental health provider reviewed Petitioner’s assertions and available records and provided an AO dated 17 April 2022. The AO stated in pertinent part:

Petitioner’s available in-service personnel and medical records contained diagnoses of Major Depressive Disorder, PTSD, Panic Disorder, EPTE and History of Polysubstance Abuse. He reported symptoms and behavioral changes that were consistent with early PTSD, as well as his ongoing depressive and

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX-XX-[REDACTED] USMCR

anxiety conditions. Civilian psychiatric records during his enlistment with the USMC Reserves documented long-standing anxiety and depressive symptoms for which he was under active treatment during his USMC service, including his deployment. His diagnoses from his civilian mental health providers (including psychiatric hospitalizations) included Major Depressive Disorder with OCD and Anxiety Disorder, Not Otherwise Specified. VA records beginning on 7/13/2004 (while still in USMC reserves), documented evaluation and treatment for Major Depression, Obsessive-Compulsive Disorder, Panic Disorder, PTSD, and early Bipolar Disorder/Schizoaffective Disorder. Post-discharge medical records from VA and civilian providers contained diagnoses of TBI and residual symptoms of TBI, primarily headaches, attributed to concussive injuries from his Iraq deployment. Petitioner provided VA Rating Decisions granting service-connection for PTSD, TBI, Headaches, and Bipolar Disorder. Though Petitioner provided contradictory explanations for his marijuana use misconduct during his disciplinary proceedings, in-service military and civilian mental health evaluations/treatment, and post-discharge, it is plausible his marijuana use "to get out of the Marines" was a maladaptive coping strategy to escape the environment which triggered his PTSD symptoms and deal with his range of mental health symptoms (psychological defenses of avoidance, denial, suppression).

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is in-service and post-discharge evidence that Petitioner incurred PTSD, TBI, as well as mood and anxiety mental health conditions attributable to his military service. There is sufficient evidence that Petitioner's misconduct could be attributed to his multiple mental health conditions."

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.

First, the Board noted that Petitioner's first DD Form 214 issued for the period of 18 May 1999 to 14 August 1999 is in error. Petitioner's characterization of service should be noted as "Honorable" and not "uncharacterized" as he successfully completed his initial active duty training and continued his service. Additionally, after review of Petitioner's request, the Board determined that his final DD Form 214 issued for the period of 21 October 2003 to 18 May 2005 is incorrect. Petitioner's characterization of service should reflect Honorable and should be documented with a remark in Petitioner's service record as opposed to a DD Form 214.

Further, the Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from one or more mental health conditions while in-service, either exacerbated or incurred due to his service while deployed to Iraq. The Board took particular note of Petitioner's record of service which indicates he was admitted into a civilian partial hospitalization program on two occasions in 2004 and 2005, both admissions occurring after his deployment to Iraq. Therefore, the Board found that a nexus existed between Petitioner's experiences during deployment and his misconduct, and that the

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX-XX-[REDACTED] USMCR

experiences mitigated the discharge. Therefore, based on the chronology of events, the Board determined that Petitioner's record of service and in particular, his detailed statements submitted to his commanding officer after his deployment but prior to his discharge, corroborated his contentions. The Board found Petitioner's statements to be consistent, credible, and also corroborated by his fellow Marines. As a result, the Board concluded Petitioner's characterization of service during his last period of service, from 21 October 2003 to 18 May 2005, shall be upgraded to "Honorable." The Board also concluded it was in the interests of justice to change to Petitioner's narrative reason for separation to "Secretarial Authority" with associated changes to his separation authority and code.

Notwithstanding the recommended relief, the Board concluded Petitioner's request for a RE-1 reentry code is not supported by the totality of the evidence. Based on his history of mental health issues and his misconduct, the Board felt it appropriate to change his reentry code to RE-3C.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 for the period of 18 May 1999 to 14 August 1999 reflecting that the characterization of service was "Honorable."

That Petitioner's final period of service for the period of 21 October 2003 to 18 May 2005 be appropriately recorded as an administrative remark in his service record reflecting that his service was characterized as "Honorable," that the narrative reason for separation was "Secretarial Authority," that his separation authority was "MARCORSEPMAN 6214," that his separation code was "JFF1," and that the reenlistment code was "RE-3C."

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.

6/5/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]