



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

██████████
Docket No: 7126-21
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) 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

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 he be issued a Certificate of Release or Discharge from Active Duty (DD Form 214) and that his naval record be corrected to reflect an upgraded characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 1 April 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).

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. Petitioner enlisted and entered a period of active duty in the Marine Corps on 15 August 2016.

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

c. The misconduct that resulted in Petitioner's general court martial (GCM) conviction occurred between 1 April 2017 and 23 April 2017.

d. On 6 June 2018, Petitioner was convicted by GCM of six specifications of Article 120b, Uniform Code of Military Justice. Three specifications were for sexual assault of a child and three specifications were for sexual abuse of a child. The victim in the case was a 15-year-old male. The military judge sentenced Petitioner to a dishonorable discharge and the convening authority commuted the dishonorable discharge to a bad conduct discharge on 9 August 2018 in accordance with a pretrial agreement.

e. The U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence on 6 February 2020.

f. The U.S. Court of Appeals for the Armed Forces denied review on 15 April 2020.

g. Petitioner was discharged on 3 March 2021 with a bad conduct discharge.

h. Petitioner contends that the circumstances surrounding his GCM conviction and appellate review have been lengthy, dramatized, and exaggerated to the extent it has caused him mental and physical damage. He states the mistake he made at 18 years old has caused him to suffer daily. He states he has become a victim of sexual assault and has flashbacks, panic attacks, and was recently diagnosed with PTSD by his neurologist. He states he is remorseful for his actions. Petitioner further contends that he never received his DD Form 214 at the time of separation from his previous unit although he made multiple attempts to contact them.

i. In support of his application, Petitioner provided multiple court decisions, his record of trial with accompanying documents, and a request for legislative action.

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 Headquarters Marine Corps shall issue Petitioner a Certificate of Release or Discharge from Active Duty (DD Form 214) and that his characterization of service should reflect a Bad Conduct Discharge.

In its deliberations, the Board applied liberal consideration in accordance with the references; however found the evidence submitted insufficient to establish the existence of probable material error or injustice. The Board noted that Petitioner was afforded his due process rights, was represented by competent military counsel, and voluntarily entered a plea of guilty in accordance with a pretrial agreement. Furthermore, the Board noted that the U.S. Navy-Marine Corps Court of Criminal Appeals addressed three assignments of error and affirmed the findings and sentence in Petitioner's case; and that the U.S. Court of Appeals for the Armed Forces denied review. Petitioner contends that as a result of his court martial he now suffers from various mental health conditions, physical damage, and has become a victim of sexual assault. The Board construed that these assertions purportedly occurred after his court martial and noted that Petitioner

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

provided no medical documentation in support of these assertions. Additionally, the Board found Petitioner's misconduct to be severe and the military judge's sentence appropriate. The Board further determined that the Petitioner received the benefit of a commuted characterization of service in exchange for his pleas of guilty and ultimately concluded there was insufficient evidence to support a grant of clemency.

RECOMMENDATION:

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

Petitioner be issued a DD Form 214 indicating the characterization of service as a "Bad Conduct Discharge."

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.

4/22/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]