



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

[REDACTED]  
Docket No: 7191-21

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) 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 w/ enclosures  
(2) Advisory Opinion of 10 Jan 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 discharge be upgraded to General (Under Honorable Conditions). Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 February 2022, 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the 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. Petitioner enlisted and began a period of active duty on 24 September 2003 after receiving waivers for pre-service marijuana use. From 12 September 2004 until 3 March 2005, Petitioner deployed to [REDACTED] at [REDACTED], to include serving there during the Second Battle of [REDACTED]. His proficiency and conduct markings during his combat tour were 4.6/4.5 respectively, and he earned a combat action ribbon (CAR).

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c. On 4 July 2005, 3 months after returning from combat, Petitioner had an alcohol-related incident which included: being on liberty without a buddy; failing to return before midnight; behaving in a drunk and disorderly manner; refusing to produce his military identification card and, instead, claiming that he was a civilian; and assaulting to U.S. Air Force senior enlisted members by punching one in the face with his fist and hitting the other with his elbow. Petitioner's resulting substance abuse screening on 19 July 2005 identified that Petitioner reported drinking daily following his return from Iraq which, at 6-8 drinks per day, was diagnosed as alcohol abuse.

d. Petitioner received several psychiatric follow-ups in July of 2005. The first described him as having a confused mood and expressing feelings of catastrophe, with a diagnoses of anxiety disorder (AD), alcohol abuse, and borderline personality disorder (PD). The second identified that he was recommended for expeditious administrative separation for his psychiatric condition and that he felt better after being placed into a less stressful environment pending separation.

e. Petitioner finally received post-deployment health screening on 2 August 2005, during which he reported that he had felt he was in great danger of being killed and describes that he felt down, depressed or hopeless with little interest or pleasure in doing things.

f. Petitioner's next psychiatric follow-up on 5 August 2005 indicated that Petitioner was scheduled to begin Substance Abuse Rehabilitation; however Petitioner was placed into pre-trial restriction on 22 August 2005 and charged for the 4 July 2005 offenses. He submitted a request for a pre-trial agreement on 24 August 2005 which was accepted the next day. His charges were heard before summary court-martial (SCM) on 31 August 2005, where he pled guilty to violations of two specifications of Article 91, striking a non-commissioned officer, two specifications of Article 92, violation of a lawful General Order, Article 107, false official statement, and Article 134, drunk and disorderly. Petitioner was sentenced to restriction rather than confinement to permit him "to contribute constructively to the unit during his carrying out of the sentence."

g. After serving his sentenced period of restriction, Petitioner was notified of administrative separation on 10 October 2005 and, per the terms of his pre-trial agreement, waived his right to his administrative board hearing. His commanding officer forwarded a recommendation that he be discharged for misconduct due to commission of a serious offense with an other than honorable characterization of service. While awaiting action on his separation, he was counseled on 25 October 2005 for failure to complete his assigned alcohol treatment course. Petitioner's separation was approved on 20 November 2005, and he was discharged on 21 December 2005 with a final proficiency and conduct average of 4.4/4.4.

h. Petitioner contends that the singular cause of his alcohol abuse and the resulting alcohol-related incident of misconduct was the onset of post-traumatic stress disorder (PTSD) following his combat deployment. He has submitted evidence that the Department of Veteran's Affairs (VA) has diagnosed him with combat-related PTSD.

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i. Because Petitioner contends combat-related PTSD, the Board requested a medical advisory opinion (AO) from a qualified mental health provider. The AO relied, in part, on evidence from Petitioner's in-service health records, observing that Petitioner was diagnosed with AD, alcohol use disorder, and (PD) following his deployment. In addition to the VA diagnosis of combat-related PTSD, the AO noted that four witness statements in Petitioner's SCM record testify to his character and contributions during the combat deployment for which he received his CAR and that his mental health (MH) diagnoses were identified post-deployment. The AO assessed that it is possible the VA has reconsidered the AD diagnosis as PTSD and that Petitioner's alcohol use and behavior were related to symptoms of unidentified PTSD during his military service. As such, the AO opined that there is evidence Petitioner incurred an unfitting MH condition during his military service to which his misconduct might be attributed.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by policy for claims based upon PTSD and MH.

In this regard, the Board notes Petitioner's misconduct and does not condone it; however, the Board concurred with the AO in that Petitioner's military record prior to returning from his combat tour appears unblemished, his alcohol-related misconduct incident on 4 July 2005 occurred after his combat deployment during a highly volatile period of conflict, he was diagnosed in-service with a mental health condition after exhibiting symptoms, and he has since been diagnosed with PTSD. As a result, the Board found sufficient evidence to support that Petitioner's MH condition, whether an AO or PTSD, when considered together with his service record before and during combat, mitigates his discharge.

To the extent that Petitioner had an alcohol-related incident, the Board noted that it was within his commanding officer's discretion to administer discipline for the misconduct. However, the Board also noted that Petitioner had a diagnosed post-combat mental health condition, he was recommended for expeditious administrative separation, and he was scheduled for substance abuse treatment in August of 2005. The Board observed that, instead of quick punishment then separation, which could easily have been accomplished, Petitioner's "expeditious" discharge ultimately did not occur until over 4 months after recommended. Further, the Board assessed that Petitioner's separation finally materialized without any apparent follow-through by his command in ensuring he received necessary alcohol abuse treatment beyond a de minimis counseling entry, months later, indicating he had failed to complete an "assigned alcohol treatment course." Although the Board considered this delay and lack of necessary treatment relevant to Petitioner's other mitigating factors, the Board determine that the totality of mitigating factors did not merit additional relief beyond that directly or impliedly requested. Finally, the Board determined the Petitioner's personal appearance would not materially alter the Board's understanding of his request, its consideration of his record, or the Board's findings.

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

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RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that his "General (Under Honorable Conditions)" discharge was issued on 21 December 2005 under the authority of "MARCORSEPMAN par. 6214" for the narrative reason of "Secretarial Authority" with a separation code of "JFF1."

That no further changes be made to Petitioner's record.

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.

3/3/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]