



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

█
Docket No: 7440-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
█ USMC

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 with 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.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 4 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, 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

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

determinations (Wilkie Memo). Additionally, the Board also considered an 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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the Marine Corps and began a period of active service on 15 August 1975. Petitioner's pre-enlistment physical on 22 May 1975 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Petitioner last reenlisted on 29 October 1982 while serving in paygrade E-6 (SSgt).

d. On 21 June 1984, Petitioner's command issued him a "Page 11" counseling warning (Page 11) for not being at his appointed place of duty. The Page 11 expressly warned Petitioner that further infractions will require disciplinary action. Petitioner did not submit a Page 11 rebuttal statement.

e. On 29 March 1984, Petitioner was convicted at a Summary Court-Martial (SCM) for frauds against the United States when he submitted a false travel voucher. Petitioner was sentenced to forfeitures of pay.

f. On 21 November 1984, Petitioner's command forwarded a request to Headquarters, Marine Corps that he be relieved of his assigned duties as an instructor at UYK-5 Computer School, Combat Systems Technical School Command and transferred. The request noted that Petitioner's performance of duty could best be described as marginal and also noted he was late for duty and failed to report on several occasions. The request also noted Petitioner's SCM conviction and specifically stated Petitioner "does not possess the bearing, tact, leadership or professionalism that is required in a position of trust...and he does not possess the positive image that reflects well on the Corps."

g. On 17 December 1984, Petitioner's command issued him a Page 11 counseling sheet for continually being late for work. The Page 11 warned him that a failure to take corrective action may result in administrative separation or judicial proceedings. Petitioner did not submit a Page 11 rebuttal statement.

h. On 13 January 1985, Petitioner commenced an unauthorized absence (UA) from [REDACTED]. In October 1985, Petitioner's command declared him a deserter and dropped him from the rolls. Petitioner's UA terminated over six years later

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

on 7 May 1991 with his arrest by civilian authorities in [REDACTED]. Petitioner's UA lasted a total of approximately six years, three months, and twenty-five days (2,305 days).

i. On 25 July 1991, Petitioner was notified of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. Petitioner consulted with counsel and waived his right to elect an administrative separation board. Ultimately, on 23 August 1991 the Petitioner was discharged from the Marine Corps for misconduct with an other than honorable (OTH) characterization of service, assigned an RE-4 reenry code, and administratively reduced in rank to Lance Corporal (E-3) upon his discharge.

j. In short, Petitioner contended that he was suffering from numerous service-connected mental health conditions and exhibited such symptoms at the time of his UA. The Petitioner stated that he asked for help several times but that there were no resources available to get the help he needed. The Petitioner contended that if he received the help he needed at the time he would have been able to use his better judgment and would not have made the decisions leading to the misconduct underlying his discharge. The Petitioner argued that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service.

k. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued a medical opinion on 28 January 2022. The Ph.D. noted that Petitioner's service record contained evidence of a mental health diagnosis (major depression) and the in-service provider further noted Petitioner suffered from such symptoms at the time of his misconduct and his mental health condition influenced his behavior. The Ph.D. further noted that the in-service provider determined that Petitioner's symptoms did not render him unable to recognize the wrongfulness of his conduct, but did render him less able to conform his conduct to the requirements of the law. The Ph.D. concluded by opining that there was sufficient evidence Petitioner exhibited behaviors associated with a mental health condition on active duty and his misconduct may be mitigated by his mental health condition.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants 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 mental health issues mitigated some, but not all, of the misconduct used to characterize his OTH discharge. 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.

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

The Board concluded that there was no nexus between Petitioner's mental health conditions and/or related symptoms and his SCM misconduct, and determined that there was insufficient evidence to support the argument that any mental health conditions mitigated such misconduct. Thus, the Board concluded that filing a fraudulent travel claim was not due to mental health-related conditions or symptoms.

Despite 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 even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board noted the simple fact remained was that Petitioner left the Marine Corps while he was still contractually obligated to serve and went into a UA status without any legal justification or excuse for a staggering 2,305 days. Additionally, the Board noted that there was a conflicting civilian mental health opinion from July 1991 stating that it was Petitioner's UA that caused his depression and not vice versa. Notwithstanding, the Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions on active duty. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge to honorable solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of extraordinary clemency, that the Petitioner merits a GEN characterization of service and no higher.

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

RECOMMENDATION:

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

That Petitioner's characterization of service be changed to "General (Under Honorable Conditions)."

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

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

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.

3/7/2022

[REDACTED]