



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

█
Docket No: 7632-21

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █, █
█ 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 7 Mar 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)" and the narrative reason for separation be changed to "Medical" or "General." Enclosures (1) and (2) apply.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 25 March 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 enclosure (2), 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted and began a period of active duty on 28 August 2012. He received administrative counseling, on 19 July 2013, for a violations of Article 91 for insubordinate conduct toward a noncommissioned officer and Article 92 for failure to obey a lawful order by

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going to the Single Marine Program building after being instructed to remain in his room. The description of the incident references him rolling his eyes, muttering under his breath, and using “racial slurs towards a peer without regards to [his] surroundings.”

c. On 30 September 2013, Petitioner received nonjudicial punishment (NJP) for violations of for violations of Article 86, failure to go to his appointed place of duty at the prescribed time, Article 91, disrespectful deportment toward a Sergeant in the execution of her office, and Article 92, failure to obey a lawful order issued by the base magistrate not to drive aboard [REDACTED]. The description of the incident again identifies him rolling his eyes and making various gestures while being questioned.

d. Petitioner was counseled, on 12 December 2013, for having positive urinalysis test results for use of marijuana and, on 18 December 2013, for administrative separation processing due to misconduct, drug abuse. However, on 19 December 2013, he broke into a vehicle, committed theft of other Marines’ possessions, and displayed reportedly bizarre behavior with the duty officer as well as upon being questioned regarding the incident and when his room was searched for the stolen items.

e. Petitioner received a second NJP on 29 January 2014 for unspecified violations of Article 86 and Article 92; the next day he was tried before Special Court-Martial and pled guilty, pursuant to a pre-trial agreement (PTA), to violations of Article 121, for larceny of a Garmin GPS from a Corporal, and two specifications of Article 112a, for wrongful possession and use of marijuana. Petitioner was sentenced to 75 days of confinement, reduction to Private/E-1, and a Bad conduct Discharge (BCD). However, in addition to reducing his sentence of confinement in accordance with his PTA, the convening authority’s action on his sentence disapproved his BCD “as a matter of clemency.”

f. While Petitioner was confined, he learned that two of his cousins had been shot; he received medical treatment for suicidal ideations and for feeling overwhelmed. His screening for traumatic brain injury also noted symptoms of difficulty concentrating, feeling jumpy, and being on guard/overly alert.

g. On 5 February 2014, Petitioner was notified of separation processing for misconduct due to drug abuse and for pattern of misconduct; he waived his administrative board hearing in accordance with the terms of his PTA. Commander, [REDACTED] Marine Expeditionary Force approved his administrative discharge for misconduct due to drug abuse, and he was discharged on 24 March 2014 with an other than honorable (OTH) characterization of service.

h. Petitioner contends through counsel that his discharge was unjust because he was suffering symptoms and behaviors of mental health disorders of schizophrenia and psychosis which were evident during his military service but not diagnosed until after his discharge. His counsel attributes his in-service misconduct to his mental health symptoms which he contends should have prompted a mental health evaluation and, post-discharge, are of such severity that it prompted a civilian court to seek an assessment of his fitness to participate in legal proceedings. In support of his contentions, Petitioner submits documentation of his post-service hospitalization and diagnoses of schizophrenia and psychosis with detailed notes describing his

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symptoms and behaviors. His medical records note this his first schizophrenic break may have occurred during his service in the Marine Corps and that he does not believe he has a mental illness “because there is nothing wrong with him.”

i. Because Petitioner contends a mental health condition, the Board requested an AO from a qualified mental health provider. The AO reviewed evidence of Petitioner’s service records, available in-service medical records and post-service mental health records. The AO observed evidence of symptoms and behavioral changes during Petitioner’s military service indicative of a diagnosable mental health condition. Additionally, the AO elaborated that the witness description at the time of his misconduct in December of 2013 “is not the typical description of someone who is intoxicated but rather someone who is distracted by internal stimuli” and explained that he may have been experiencing symptoms of a psychotic disorder such as poor judgment, poor impulse control, and poor emotional tolerance, which emerge before diagnostically significant signs. The AO further noted evidence that Petitioner continues to minimize and deny his mental health symptoms even as an inpatient at a psychiatric hospital and would likely have done so during his military service even if he had received more thorough screening. As a result, the AO opined that there is evidence Petitioner exhibited behaviors associated with a mental health condition during his military service which may mitigate some of his misconduct.

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 equitable relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board notes Petitioner’s misconduct and does not condone it; however, the Board concurred with the AO that Petitioner experienced symptoms and behaviors of a mental health condition during his military service. The Board determined that the available evidence, to include witness statements describing Petitioner’s behavior, established a nexus between Petitioner’s mental health condition and most of his misconduct, specifically from December of 2013 and thereafter. As a result, the Board found that Petitioner’s mental health condition sufficiently mitigates his OTH characterization of service and narrative reason for separation to merit relief. Although the Board concurred with a change to Petitioner’s narrative reason for separation in addition to an upgrade of his characterization of service, the Board determined that a change to his narrative reasons for separation to disability would not be appropriate based on his misconduct and, instead, determined that his reason of “Misconduct (Drug Abuse)” should be changed to “Secretarial Authority.” In making this finding, the Board determined the preponderance of the evidence does not support a conclusion that Petitioner was not mentally responsible for his misconduct. Accordingly, the Board determined it would be inappropriate to grant him military disability benefits by assigning him a disability discharge when he was ineligible for disability processing due to his misconduct. The Board ultimately concluded the interests of justice were served in Petitioner’s case with the recommended changes to his record.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 24 March 2014, his "General (Under Honorable Conditions)" discharge was issued under separation authority "MARCORSEPMAN par 6214" with a narrative reason for separation of "Secretarial Authority," and separation code "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.

4/1/2022

[REDACTED]

Executive Director

[REDACTED]