



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

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Docket No: 7774-21

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 and make other conforming changes to his DD Form 214 following his involuntary discharge for a personality disorder.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 18 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 determinations (Wilkie Memo). Additionally, the Board also considered the advisory

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opinion (AO) furnished by qualified mental health provider. Petitioner was given the opportunity to submit an AO rebuttal and he did do so.

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 enlisted in the Marine Corps and began a period of active service on 14 September 1998. Petitioner's pre-enlistment physical examination on 24 June 1998 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. On 18 April 2000 Petitioner received non-judicial punishment (NJP) for larceny from the Marine Corps Exchange (MCX) and for possessing a false military identification card. Petitioner received the maximum punishment permitted at NJP. Petitioner did not appeal his NJP.

e. On 31 May 2000, the Commanding Officer (CO) of Naval Hospital Camp Lejeune strongly recommended that Petitioner be processed for an administrative discharge by reason of unsuitability due to a severe personality disorder. The CO determined that Petitioner was not mentally ill and was responsible for his behavior. However, the CO determined that Petitioner manifested a long-standing disorder of character and behavior which was of such severity as to interfere with Petitioner's ability to function effectively in the military environment. The CO noted that Petitioner has adjusted poorly to the demands of military service and was unmotivated for continued military service despite appropriate leadership, counseling, discipline, and other interventions. Although not imminently suicidal or homicidal, the CO concluded the Petitioner posed a continuing risk to do harm to self or others and negatively impact unit effectiveness and morale if retained in naval service. Accordingly, the CO strongly recommended Petitioner's expeditious administrative discharge. Lastly, the CO reiterated that Petitioner did not possess a severe mental disease or defect and was considered competent.

f. On 24 July 2000 Petitioner's command initiated administrative separation proceedings by reason of convenience of the government on the basis of a diagnosed personality disorder. Petitioner waived his rights to consult with counsel and submit a statement on his own behalf. The lowest eligible discharge characterization Petitioner could have received was General (Under Honorable Conditions) (GEN). Ultimately, on 15 August 2000 Petitioner was discharged from the Marine Corps with a GEN discharge and assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Involuntary Discharge Condition not a physical disability, Personality Disorder."

g. On 17 April 2002 the Naval Discharge Review Board (NDRB) denied Petitioner's application for relief. Petitioner had contended that despite his youth, immaturity, and personality disorder, his overall service record supported a fully honorable discharge. The

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NDRB determined that Petitioner's discharge was proper as issued and that no change was warranted.

h. In short, Petitioner contended that on active duty he developed what he now recognized to be indicators of mental illness. Petitioner stated he was not sleeping and complaining of migraines and headaches, and that he also had an accident on the flight line. He stated he was making bad judgment calls leading to his misconduct at the MCX, which triggered recognition of an issue, but was not recognized at the time as being a mental health indicator. Petitioner also provided evidence that the VA granted him a service-connection in 2021 for an unspecified anxiety disorder that rated him at 50%. Petitioner's overall active duty trait average in conduct was 4.40, above what Marine Corps regulations in place at the time of his discharge required (4.0) in conduct (proper military behavior), to be considered for a fully honorable characterization of service.

i. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO dated 4 January 2022. The Ph.D. initially observed that Petitioner's active duty records contained evidence of reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition (i.e., adjustment disorder). The Ph.D. noted that Petitioner submitted evidence that supported a post-discharge diagnosis (anxiety disorder). The Ph.D. also noted that evidence submitted by Petitioner indicated his mental health symptoms began after his misconduct. Moreover, the Ph.D. determined that stealing a radio from the MCX and having a false military identification card are not typical types of misconduct exhibited by a person suffering from adjustment or anxiety symptoms. The Ph.D. determined that stressors in military life are different from civilian life and it was possible the criteria for Petitioner's personality disorder diagnosis could be attributed to his mental health condition. The Ph.D. concluded by opining there was sufficient evidence Petitioner exhibited behaviors associated with a mental health condition on active duty, however, the preponderance of available objective evidence failed to establish Petitioner's active duty misconduct could be mitigated by a mental health condition.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial 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 determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board was not willing to grant

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an honorable discharge characterization. The Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. The Board also concluded that although Petitioner has a post-discharge VA service-connection for an anxiety disorder, Petitioner's records contemporaneous to his service lacked sufficient evidence to establish a nexus between Petitioner's mental health conditions/symptoms and his in-service misconduct. As a result, even under the liberal consideration standard the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board concluded that the specific misconduct Petitioner committed - larceny and possession of a false military ID card - was not the type of misconduct that would be excused or mitigated by mental health conditions even with liberal consideration. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions.

The Board determined that an honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that even though flawless service is not required for an honorable discharge, in this case only a GEN discharge characterization was appropriate. Lastly, even 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 clemency, that the Petitioner only merits a GEN characterization of service and no higher.

The Board also did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all 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 separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the narrative reason for separation should be changed to "Secretarial Authority."

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

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.

2/24/2022

