



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

[REDACTED]
Docket No: 0048-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[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 1 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 "Honorable" or "General (Under Honorable Conditions)" and the narrative reason for separation be changed to "Secretarial Authority" with corresponding changes to the separation authority and separation code. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 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.

b. Although Petitioner's application was not filed in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

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c. Petitioner enlisted and began a period of active duty on 9 October 2001. He received administrative counseling on 29 March 2002 after being arrested for shoplifting a can of smokeless tobacco. He was subject to nonjudicial punishment (NJP), on 17 July 2002, for two specifications of violations of Article 86, unauthorized absence, and Article 91, failure to obey a lawful order. Although his punishment included 30 days of correctional custody, he was released on 22 July 2002 for failure to train and administratively counseled on retention with separation warnings for his pattern of misconduct.

d. Petitioner was sentenced to 30 days of confinement, on 26 September 2002, after being found guilty at Summary Court-Martial of a violation of Article 91, insubordinate conduct toward a noncommissioned officer.

e. Petitioner deployed with [REDACTED], on 24 January 2004 in support of Operation Enduring Freedom and Operation Iraqi Freedom, during which he qualified for the award of the Combat Action Ribbon and Presidential Unit Citation.

f. On 16 October 2003, Petitioner was questioned regarding allegations of illegal drug use reported by another Marine at which time he confessed to wrongful use of controlled substances. He received administrative counseling on 23 October 2003 for his illegal drug use and a second NJP on 28 October 2003 for violation of Article 112a, wrongful use of marijuana and methamphetamines. Although a letter dated 21 October 2003 from the Weapons Company Commanding Officer also mentions underage drinking, he was not charged with that offense.

g. Upon his 30 October 2003 notification of administrative separation for misconduct due to drug abuse and pattern of misconduct, Petitioner waived his right to an administrative hearing, to submit a statement on his behalf, and to consult with counsel; however, Petitioner did submit a statement for consideration. In his statement, he acknowledged his difficulty adjusting to service while in garrison and expressed that he felt he only excelled in the field or combat and could not ask people to trust him when he would have a hard time doing so himself based on his actions. The recommendation for Petitioner's separation with an other than honorable discharge was forwarded on 31 October 2003.

h. During required substance abuse screening on 2 December 2003, Petitioner was found not to meet the criteria for drug abuse or dependence; however, he did report that his drug use was due to coping with the loss of a member of his unit. In Petitioner's diagnostic records from the Department of Veteran's Affairs (VA), he describes that their corpsman accidentally shot himself in the head while cleaning his weapon; Petitioner was nearby and states the next thing he knew, he "had his head all over" him.

i. Commanding General, [REDACTED] Marine Division, approved Petitioner's separation for the reason of misconduct due to drug abuse on 11 December 2003, and he was discharged on 22 December 2003 with an other than honorable characterization of service.

j. Petitioner contends that his discharge was unjust because he incurred post-traumatic stress disorder (PTSD) during his combat deployment to Iraq and his post-deployment misconduct of

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drug abuse was a form of self-medication for symptoms from his traumatic stressors. In addition to the death of his corpsman, Petitioner describes heavy combat which included shooting enemy insurgents. However, he also describes self-medicating following “betrayal involving another Marine and [his] high-school sweetheart.”

k. In support of his contentions, Petitioner submitted documentation of his VA diagnostic summary for PTSD and alcohol use disorder, which his records indicate, more likely than not, is to self-medicate his PTSD symptoms.

l. Because Petitioner contends a mental health condition, the Board requested enclosure (2), a medical AO from a qualified mental health provider. The AO reviewed evidence of Petitioner’s service records and post-service VA records, noting that the VA’s diagnosis of PTSD is service connected and that petitioner experienced combat during his deployment to Iraq. The AO observed that the 2003 misconduct which resulted in Petitioner’s administrative separation could be attributed to the reason’s he describes, to include resorting to maladaptive coping skills to deal with the death of the corpsman but that his combat stressors would not mitigate the 2002 misconduct which occurred prior to his deployment. As a result, the AO opined that there is evidence Petitioner exhibited behaviors associated with PTSD during his military service to which his 2003 misconduct may be attributable.

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 there is sufficient evidence Petitioner experienced combat trauma during his service in Iraq for which he has diagnosed PTSD. With respect to Petitioner’s considerable pre-deployment misconduct, although the Board again concurred with the AO that Petitioner’s PTSD would not mitigate misconduct prior to his deployment, the Board observed that Petitioner’s command clearly could have pursued administrative separation prior to deploying but did not, instead choosing to take him into combat during which he appears to have served honorably. As a result, the Board found that Petitioner’s combat-incurred PTSD partially mitigates his characterization of service and narrative reason for separation.

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 22 December 2003, 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.”

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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.

3/24/2022

[REDACTED]