



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

[REDACTED]
Docket No: 744-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [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 5 May 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 and that his primary military occupational specialty (PMOS) be corrected to add "0351." Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 May 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 20 September 1999; he was honorably discharged following his first combat tour in Kuwait. He reenlisted on 4 May 2003, under an incentive program for a lateral move into the MOS of 0351, and was transferred to 1st

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Battalion [REDACTED] Marines, [REDACTED] Marine Division. He deployed to Iraq from March to June of 2003, from March to July of 2004 earning a Combat Action Ribbon, and from February to October of 2005. Between February of 2004 and April of 2005, Petitioner was counseled on multiple occasions that he was not recommended for promotion to Sergeant/E-5 due to either lack of leadership or lack of judgment. Petitioner's post-deployment health assessments prior to his misconduct reflect exposure to combat and referral to mental health in 2005.

c. On 15 April 2005, Petitioner received nonjudicial punishment (NJP) for wrongful use of amphetamine and methamphetamines. He was administratively counseled, on 10 November 2005, for drug abuse. On 2 March 2006, he pled guilty before Special Court-Martial (SPCM), pursuant to a pretrial agreement, to a single specification of Article 112a for wrongful use of methamphetamines on 5 January 1006 and was sentenced to a Bad Conduct Discharge (BCD), 60 days of confinement, reduction to Private/E-1, and forfeitures of pay. The sentence and findings were affirmed upon appellate review, and Petitioner was discharged on 26 January 2007 with a BCD. Petitioner's individual separation information at the time of his discharge reflects a PMOS of 0351 consistent with the PMOS of 0351 reflected in Chronological Record, NAVMC 118(3), beginning 29 August 2003 until his transfer to begin appellate leave on 7 August 2008.

d. Petitioner contends that his discharge was unjust because he incurred post-traumatic stress disorder (PTSD) during his multiple combat deployments and that he began using alcohol and narcotics to escape from reality after his final return from deployment for symptoms from combat trauma. Petitioner describes that his company suffered heavy casualties during his final deployment, losing 16 members in combat, and that he needed mental health assistance which he did not received after returning. In support of his contentions, Petitioner submitted his post-deployment health assessments, his mental health intake records from the Department of Veteran's Affairs (VA), and two character letters describing that he had served well curing his combat tours but returned with mental health problems that were not adequately addressed, that he paid for his mistake, and that he has since achieved sobriety. He also provided evidence of his post-discharge VA diagnosis that he sustained PTSD attributable to his military service. In rebuttal to the AO, he provided supplemental post-discharge mental health records.

e. Because Petitioner contends a mental health condition, the Board requested a medical advisory opinion (AO) from a qualified mental health provider. The AO stated in pertinent part:

Among the available records, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. Although the Petitioner's combat deployment did predate his substance use misconduct, it is difficult to attribute his misconduct to unrecognized symptoms of PTSD given his pre-service history and misconduct prior to his first deployment. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Unfortunately, he has provided no medical evidence in support of his claims. Additional records (e.g., post-service medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

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The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

In response, Petitioner submitted additional medical records to support his petition.

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 this policy.

In this regard, the Board notes Petitioner’s drug abuse misconduct and does not condone it; however, the Board concurred with the AO in that there is evidence Petitioner experienced combat trauma during his service in Iraq for which he has diagnosed PTSD and for which he was referred to mental health following his deployment. With respect to Petitioner’s pre-service admission of marijuana use, the Board observed that Petitioner served his entire first enlistment honorably, reenlisted, and served multiple combat tours prior to his documented in-service drug abuse of a different prohibited substance. The Board concluded, in light of Petitioner’s total record of service, that his pre-service use of marijuana was an insufficient basis upon which to withhold attribution of his post-deployment methamphetamine use to his documented experience of combat trauma and mental health difficulties. As a result, the Board found that Petitioner’s combat-incurred PTSD mitigates his misconduct and discharge and merits the requested relief along with associated changes to his reason for separation.

Additionally, the Board noted evidence throughout Petitioner’s official military personnel records which reflects his PMOS of 0351 and determined that the omission from his discharge records occurred in error, thus supporting a grant of that specific relief as well.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 26 January 2007, his “Honorable” discharge was issued under separation authority “MARCORSEPMAN par 6214” with a narrative reason for separation of “Secretarial Authority,” a separation code “JFF1,” and the additional PMOS of “0351” in Block 11, with corrected years and months for the PMOS of “1341” from his first period of enlistment.

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

A copy of this report of proceedings be filed in Petitioner’s naval record.

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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.

6/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]