



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

██████████
Docket No: 1160-22

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 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 25 Feb 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)” (GEN) and the narrative reason for separation be changed to “Secretarial Authority” with corresponding changes to the separation authority and separation code. Enclosure (1) applies.

2. The Board, consisting of ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 15 April 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.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] USMC

b. Petitioner enlisted and began a period of active duty on 4 November 1996. He was subject to nonjudicial punishment (NJP), on 5 June 1997, for Article 92, violation of a lawful general order by drinking underage.

c. Petitioner served without further incident until he was hospitalized from 9 – 17 October 1998 for life-threatening injuries incurred in the line of duty from a motor vehicle accident, which occurred while Petitioner was on authorized liberty. He returned to a limited duty status on 6 November 1998 and was referred to a medical board the following week.

d. After an orthopedic reevaluation, on 17 August 1999, diagnosed Petitioner with chronic pain secondary to multiple injuries that were likely to require ongoing medical follow-up and therapy, he was referred to a second medical board. The 21 September 1999 Medical Board Report observed that Petitioner's condition significantly impacted his ability to perform activities of daily life and interrupted his normal sleep patterns. The medical board found that the negative impact of Petitioner's medical condition on his ability to perform military duties precluded continuation on active duty and referred Petitioner to a Physical Evaluation Board.

e. Petitioner was counseled, on 20 March 2000, with retention and separation warnings following an off-base offense of driving while intoxicated (DWI) with a blood alcohol content (BAC) of .09. He received a second NJP, on 13 July 2000, for Article 112a, wrongful use of marijuana, and received substance abuse screening. Although he was diagnosed with alcohol dependence and cannabis abuse, the screening recommended a "Marijuana in the 90s" class as treatment. Petitioner was counseled with separation and retention warnings again, on 12 October 2000, for a second off-base DWI with a BAC of .12.

f. Petitioner was notified of processing for administrative separation for misconduct due to drug abuse on 10 August 2000; he consulted with counsel, waived his administrative board hearing, and elected not to submit a statement. On 19 August 2000, Petitioner received a third NJP for Article 112a, wrongful use of marijuana. His administrative separation was expeditiously processed and approved, and he was discharged on 3 November 2000 with an other than honorable characterization of service and final proficiency and conduct marks of 4.2/4.0.

g. Petitioner contends that his discharge was unjust because he suffered from a combination of chronic pain from debilitating injuries and post-traumatic stress disorder (PTSD) following his accident. He states that he was prescribed opioids during his extended recovery period but that his prescription abruptly ended upon a change in doctors, resulting in insufficient pain management as he progressed at length through his medical and physical evaluation boards. He contends that his misconduct of drug abuse and alcohol-related offenses resulted from self-medicating substance abuse due to his mental and physical health, which should mitigate his discharge. He also contends that his discharge is unfair in consideration of his post-service clemency evidence which includes extensive effort to achieve and maintain sobriety for the past 20 years, community volunteerism, and long-term employment as a facility manager with a major corporation, overseeing 45 employees in four buildings and leading their Veteran's Inclusion Group chapter. Notably, Petitioner submits a character letter from a Marine who served as a peer with him in Crash Fire Rescue (CFR). This letter corroborates Petitioner's

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] USMC

honorable service and superior performance prior to his accident, describing his fearlessness in performing CFR duties to include rescuing another Marine from a flash fire of burning fuel on the airfield; this letter also explains the mental and physical struggles the Marine observed Petitioner face as he struggled to return to a full duty status in spite of his injuries and retain his Marine Corps career.

h. In support of his contentions, Petitioner submits documentation of the report from his medical board and five character letters, to include witness statements attesting to his traumatic accident and injuries, the dramatic changes in behavior he experienced as a result, and his self-medicating actions as he struggled to return to a full duty status. His character letters also attest to his post-service recovery and continuing contributions to society, supporting his contention that “based on who [he] is today, no one who knows [him] ... would believe [his] service was anything other than honorable.” He also submits an affidavit that his civilian physician has diagnosed him with PTSD.

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 and supporting documents, noting that the report of the Medical Board outlines the ongoing severity of his injuries and the impact on his daily life and sleep patterns, which resulted in his referral to a PEB based on his chronic pain and need for continuing care. The AO noted that another service member corroborates the psychological and physical impact of Petitioner’s injuries and assessed that the evidence provides sufficient markers of a mental health condition. The AO observed that persons suffering similar symptoms typically resort to maladaptive coping skills such as alcohol and drug use for relief. As a result, the AO opined that there is evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and that his post-injury misconduct may be mitigated by his mental health condition.

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 evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and that his post-injury misconduct may have resulted from self-medication. However, with respect to Petitioner’s misconduct prior to his traumatic injuries, the Board also concurred with the AO that Petitioner’s mental health condition would not mitigate underage drinking offense which occurred prior in time. As a result, the Board found that effect of Petitioner’s mental health condition, considered in conjunction with his post-service clemency matters, outweighs the misconduct evidenced by his two NJPs for drug abuse and his counseling for two alcohol-related offenses. Accordingly, the Board determined that Petitioner’s request merits partial relief on equitable grounds in the form of an upgrade to GEN.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] USMC

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an honorable discharge. 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 certain 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 a GEN discharge characterization and no higher was appropriate. In making this finding, the Board weighed the seriousness of his misconduct against his service and the fact that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

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 3 November 2000, his "General (Under Honorable Conditions)" discharge was issued under separation authority "MARCORSEPMAN par 6214" with a narrative reason for separation of "Secretarial Authority," separation code "JFF1," and reentry code "RE-1A."

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.

5/2/2022

[REDACTED]
Executive Director
[REDACTED]