



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

█
Docket No: 1252-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
XXX-XX-█

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 General (Under Honorable Conditions). 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.

b. Petitioner enlisted and began a period of active duty on 22 October 2001. On 24 April 2002, he received nonjudicial punishment (NJP) for a violation of Article 92, failure to obey an order or regulation, after returning from █ without a proper liberty chit. He was also administratively counseled, on 30 September 2002, for speeding and careless driving.

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c. On 2 November 2002, Petitioner received a psychiatric consultation which determined that he was undergoing a “severe grief reaction” after the death of his brother and a close friend; he was diagnosed with polysubstance abuse and a probable depressive disorder. In spite of these mental health concerns, he deployed with the [REDACTED] Armored Reconnaissance Battalion from 8 February 2003 to 1 May 2003, but not before receiving a second NJP for another violation of Article 92, failure to obey a lawful order not to go to [REDACTED].

d. From this combat deployment, Petitioner’s records reflect the award of the Combat Action Ribbon, Presidential Unit Citation, and Sea Service Deployment ribbon. He also submitted a copy of a Certificate of Commendation from his deployment which is not in his official record but praised his combat performance, noting that he “operated his vehicle under intense enemy fire and combat operations for over 500 miles” and “played a major role in the guarding and transporting of Iraqi prisoners.”

e. Post-deployment, Petitioner was administratively counseled on 25 July 2003 and issued retention and separation warnings for larceny of a pack of cigarettes from the base Exchange Annex. He received a third NJP, on 13 August 2003, for violation of Article 92, failure to obey a lawful order, by having a female in his barracks room overnight. While in a restricted status from that NJP, he absented himself without authority from 2 September 2003 until his surrender on 9 September 2003.

f. On 3 December 2003, pursuant to a pre-trial agreement, Petitioner pled guilty before Special Court-Martial (SPCM) to violations of two specifications of Article 86, for his previous UA and for failure to go to restriction muster, and one specification of Article 112a, for wrongful use of heroin. Petitioner was sentenced to reduction to Private/E-1, 75 days of confinement, and a Bad Conduct Discharge (BCD). Following appellate review of his BCD, he was discharged on 23 September 2004.

g. Petitioner contends through counsel that he suffered post-traumatic stress disorder from his combat experiences during Operation Iraqi Freedom which he believes mitigates the misconduct for which he received a BCD, noting that his discharge is a “life sentence for PTSD-related offenses” which continues to punish him 18 years later. He asserts that he volunteered to enlist in the infantry after the attacks of 9/11 to fight on the front lines of Iraq and points out that his combat performance while operating his vehicle under intense enemy fire was recognized in a personal award as superior, exceeding all expectations, and above his peers. He states that it is an injustice to classify his combat service as bad conduct based solely on his post-deployment PTSD-related misconduct. In support of his contentions, Petitioner submits documentation of his Department of Veterans Affairs (VA) diagnosis of PTSD. He also provided an argument through counsel of the post-discharge factors in favor of clemency.

h. 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 VA diagnosis of PTSD. The AO noted that, although his post-service diagnosis did not identify a specific trauma, Petitioner was experiencing a severe grief reaction with a recommendation for further mental health evaluation prior to his combat deployment and that his post-deployment health assessment endorsed

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exposure to combat-related traumatic experiences. The AO assessed that Petitioner's post-deployment misconduct may have been a maladaptive way to cope with combat related stressors. As a result, the AO opined that there is evidence Petitioner exhibited behaviors associated with PTSD 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 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 that it does not condone Petitioner's misconduct; also, in considering the nature of Petitioner's in-service drug abuse and admitted pre-service drug use, the Board decided that Petitioner's reentry code of "RE-4B" is clearly appropriate. However, the Board concurred with the opinion of the AO regarding Petitioner's contentions of combat-related PTSD. Although the Board found that his PTSD does not mitigate his post-deployment larceny offense or his pre-deployment misconduct, the Board concluded that the combined evidence of Petitioner's service record, in-service medical history, and post-service PTSD diagnosis support his contention of experiencing symptoms of post-combat PTSD and does mitigate some of his post-deployment misconduct. With respect to the additional clemency matters argued by Petitioner's counsel, although those positive factors alone would not merit relief, the Board considered those factors as contributing to the mitigating aspect of Petitioner's mental health condition. The Board found that the totality of potentially mitigating factors in Petitioner's favor were sufficient to outweigh his post-deployment SPCM and third NJP. As a result, the Board determined that Petitioner's request warrants the specific relief requested with respect to his character of discharge in addition to a change in Petitioner's narrative reason for separation.

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

RECOMMENDATION:

That Headquarters Marine Corps (MMMA) conduct a review of Petitioner's entitlement to awards, with specific attention to applicable campaign and personal awards, and, enter a copy of any missing certificates for personal awards into his official military personnel file.

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 23 September 2004, 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."

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.

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ELIZABETH A. HILL
Executive Director
Signed by: HILL.ELIZABETH.ANNE.1106915438