



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

█  
Docket No: 1490-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
█ USMC

Ref: (a) Title 10 U.S.C. §1552  
(b) SECDEF Memo of 13 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/attachments  
(2) Naval record (excerpts)  
(3) Advisory opinion (AO) of 21 Jul 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 for an upgrade of his characterization of service, change his narrative reason for separation, reenlistment code and separation code.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 3 August 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).

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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 11 January 1965.

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d. On 12 July 1996, Petitioner received non-judicial punishment (NJP) for absence from his appointed place of duty and missing movement.

e. On 24 March 1968, Petitioner was convicted by a special court-martial (SPCM) of willfully disobeying a lawful order from a commissioned officer. Petitioner was sentenced to confinement, forfeiture of pay, and reduction in rank.

f. On 7 July 1968, Petitioner was convicted by a SPCM of willfully disobeying a lawful order from a commissioned officer. Petitioner was sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). Subsequently, the BCD was approved at all levels of review, and on 6 December 1968, Petitioner was so discharged.

g. Petitioner contends that he incurred post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) from combat injuries in Vietnam. He further contends that his disobedience in the combat setting was an attempt to stand up for his unit that was unnecessarily being sent on back-to-back missions, without the opportunity for rest, when other units were available for the second mission. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

h. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an AO. The AO stated in pertinent part:

There is evidence in the Petitioner's service medical record that he may have sustained a TBI during military service. During military service, he was evaluated and deemed fit for duty on three occasions, although he was diagnosed with a personality disorder. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Post-service, he has provided evidence of a diagnosis of PTSD that is temporally remote to his military service. It is possible that the symptoms attributed to personality disorder in service have been re-conceptualized as PTSD symptoms with the passage of time and improved mental health understanding. His misconduct occurred following his first combat deployment and is consistent with symptoms of PTSD avoidance and irritability.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is evidence of a TBI that may be attributed to military service. There is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence that his misconduct could be attributed to PTSD or TBI."

i. This Board denied Petitioner's previous applications for discharge upgrades on 26 September 2012 and 24 August 2016.

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

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The Board found no error in Petitioner's BCD. Petitioner was found guilty to a significant criminal offense for which a punitive discharge and significant confinement was warranted. No procedural defects in this execution of this discharge were evidenced. However, because Petitioner based his claim for relief in whole or in part upon his PTSD and TBI, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and TBI and the effect that it may have had upon his misconduct. In this regard, the Board substantially concurred with the AO that there is evidence of a TBI that may be attributed to military service; there is post-service evidence of a diagnosis of PTSD that may be attributed to military service; and there is post-service evidence that Petitioner's misconduct could be attributed to PTSD or TBI."

In addition to applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct in accordance with references (b) through (d), the Board also noted Petitioner's submission of supporting documentation and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition upon his misconduct, as discussed above. Based upon this review, the Board found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged and, therefore, the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

The Board considered whether Petitioner's characterization of service should be upgraded to fully Honorable, but determined that the mitigating circumstances did not so significantly outweigh Petitioner's misconduct to warrant such extraordinary relief. The Board determined that an Honorable discharge was appropriate only if the Sailor'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 outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

Although not specifically requested by the Petitioner, the Board also determined that Petitioner's narrative reason for separation, reenlistment code, separation code, and separation authority should be changed in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

#### RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Convenience of the Government: Other good and sufficient reason as determined by the SECNAV," the

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reenlistment code was "RE-1J," and the separation authority was "MARCORPERSMAN 13261.1F."

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further correction action be taken on Petitioner's naval record.

4. It is certified that 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.

8/18/2022

[REDACTED]