



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

█
Docket No: 2164-22

Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. §1552
(b) USD Memo of 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory Opinion of 3 Jun 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.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 24 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) and (c).

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 on 21 March 1972.

d. During the period from 23 August 1973 to 11 December 1973, Petitioner received three instances of non-judicial punishment (NJP). Petitioner's offenses were failure to be at his appointed place of duty, disobeying a lawful order, and unauthorized absence (UA).

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e. During the period from 8 January 1974 to 11 January 1974, Petitioner was admitted for a psychiatric evaluation and diagnosed with acute situational reaction with mutism, resolved and passive aggressive personality disorder, chronic, moderate.

f. On 8 February 1974, Petitioner was convicted by a summary court-martial (SCM) of UA totaling two days and wrongful use of provoking words.

g. On 26 April 1974, at the expiration of Petitioner's active service, Petitioner was released from active duty with a General (Under Honorable Conditions) character of service and transferred to the Marine Corps Reserve.

h. Petitioner contends that after his discharge he was diagnosed with Bipolar Disorder by the Department of Veterans Affairs (VA), which explains his behavior during his service on active duty.

i. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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

During military service, the Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed during close observation over multiple days. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition, other than his diagnosed personality disorder."

CONCLUSION

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

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The Board found no error in the issuance of Petitioner's General (Under Honorable Conditions) character of service upon completion of his required active duty service. However, because Petitioner based his claim for relief in whole or in part upon his mental health condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) and (c). Even though the Board concurred with the AO that there is insufficient evidence that Petitioner's misconduct could be attributed to a MHC, other than his diagnosed personality disorder, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice, as a matter of clemency, in accordance with reference (c). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's personality disorder had on his misconduct. Based upon this review, the Board found that the mitigating circumstances outweighed the misconduct for which Petitioner committed during his period of service and, therefore, the interests of justice are served by upgrading his characterization of service to Honorable.

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, for the period ending on 26 April 1974, was "Honorable."

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

That a copy of this record of proceedings be filed in 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.

9/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]