



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

█
Docket No: 2173-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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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) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion 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. Enclosures (2) and (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 10 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 (d).

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 28 February 1968. On 21 December 1969, Petitioner was admitted for a psychiatric evaluation and diagnosed with severe passive-aggressive personality disorder. On 30 December 1969, Petitioner was discharged and returned to duty.

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d. On 26 January 1970, Petitioner submitted a written request for separation for the good of the service in lieu of trial by court-martial. Petitioner's offenses consisted of wrongfully using amphetamines and disobeying a lawful order. Prior to submitting this request, Petitioner conferred with a military lawyer at which time Petitioner was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner admitted his guilt to the foregoing offenses and acknowledged that his characterization of service upon discharge would be Other Than Honorable (OTH). The separation authority approved his request and directed his commanding officer to discharge him with an OTH characterization of service. On 23 March 1970, Petitioner was so discharged.

e. Petitioner contends that while he was in [REDACTED] he performed his duties very well. After leaving [REDACTED] he became nervous, started drinking, and felt worried all of the time. Petitioner further states that being a young man, he made some bad decisions that resulted in his discharge. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

f. 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, he was diagnosed with a personality disorder, indicating that military service was not suitable to him. This 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 by the mental health clinician as documented in his service records. The Petitioner has provided no medical evidence to support his claims. However, his personality disorder diagnosis and misconduct did follow a year of distinguished combat service in [REDACTED]. While his personal statement is not sufficiently detailed to establish a clinical diagnosis or nexus with his behavior, it is possible that his misconduct could be attributed to unrecognized symptoms of post-traumatic stress disorder (PTSD) following combat. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his behavior in service) 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his service misconduct may be attributed to PTSD."

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.

The Board found no error in Petitioner's OTH discharge for separation for the good of the service in lieu of trial by court-martial. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the

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guidance of references (b) through (d). Even though the Board concurred with the AO that there is insufficient evidence that his service misconduct may be attributed to PTSD, they also 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 (d). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's personality disorder had on his misconduct and his service in [REDACTED] that included a Bronze Star. 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).

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 outweighed the positive aspects of his military record even under the liberal consideration standards, 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 – When directed by the Secretary of the Navy, Box 9c – MARCORSEPMAN 300," the separation code was "JFF1," the reenlistment code was "RE-1J," and the separation authority was "MARCORPERSMAN Para 6012.1F."

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/23/2022

[REDACTED]
Executive Director
[REDACTED]