



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

[REDACTED]
Docket No: 2252-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX-XX-[REDACTED] 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 (AO) of 9 May 22
(3) Rebuttal to AO of 5 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 that his punitive discharge be upgraded either to "Honorable" or to "General (Under Honorable Conditions)" and that his narrative reason for separation and separation code be changed to reflect "Secretarial Authority." Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 22 July 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 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.

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b. Petitioner enlisted in the Marine Corps and, after receiving a drug use waiver, began a period of active duty as a minor with parental consent on 18 October 1999. He was counseled on 3 August 2001 for failing to report at the prescribed time to draw his weapon. However, he advanced rapidly in rank and was promoted to Sergeant/E-5 by 2 April 2002, after less than 18 months of service. Shortly thereafter, he received a second counseling, on 22 April 2002, documenting a positive urinalysis for cocaine use.

c. Following a period of psychiatric hospitalization, Petitioner was diagnosed with an Adjustment Disorder with depressed mood and a Personality Disorder not otherwise specified and found fit for duty. His diagnosis was documented, on 23 July 2002, via administrative counseling.

d. Petitioner plead guilty before Special Court Martial (SPCM) pursuant to a pre-trial agreement to three specifications of violations of Article 86 for failure to go to his appointed place of duty, one specification of Article 112a for wrongful use of cocaine, and specifications of Article 128 for assault on a sentinel and assault on a noncommissioned officer. He was sentenced to 75 days of confinement, reduction from E-5 to E-1, forfeitures of pay, and a Bad Conduct Discharge. The convening authority's action noted that his pre-trial agreement had no effect on his sentence. He began appellate leave on 17 December 2002 and was discharged, on 7 May 2004, upon completion of appellate review.

e. Petitioner contends through counsel that his promising military career was cut short by alcohol addiction and related mental health issues but that his post-service achievements merit an upgrade of his discharge. He describes the circumstances during his active duty service which led to him accepting cocaine from another Marine as exceptionally high stress in combination with feeling that he was undeserving of his promotion to Sergeant based on his off-duty behavior. He acknowledged that what he most needed was to pursue rehabilitation for his substance abuse disorder, which he finally accomplished in 2005. He relates that he now volunteers with his local veteran's hospital to assist veterans struggling through addiction and participates in outreach to veterans who are going through the court-martial process for substance use misconduct. He also provides letters of support as evidence of his post-discharge rehabilitation and character as well as successful pursuit of a career in residential remodeling which has progressed into owning his own company. Additionally, he offered a letter from a retired Marine Corps lieutenant colonel who served during the same timeframe as Petitioner over 15 years ago. The letter addressed his observation of the recent paradigm shift in recognizing underlying mental health issues that contribute to substance abuse and expressed the view "that today, a young Marine, aged 19, that had been meritoriously promoted twice and tested positive for an illegal substance followed quickly by signs of mental health crisis would be given different opportunities and options for care and treatment." For purposes of clemency consideration, the Board noted Petitioner provided supporting documentation describing post-service accomplishments and advocacy letters.

f. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration. The AO stated in pertinent part:

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Petitioner's OMPF did contain evidence of a diagnosis of a mental health condition (Adjustment Disorder) for which he received treatment. Petitioner in his personal statement indicated his misconduct was due to alcohol misuse, which was precipitated by stress in the workplace, a desire to align with his fellow Marines, and relationship issues. There was no evidence presented that indicated Petitioner met the diagnostic criteria for a mental health condition prior to the positive urinalysis and protective order notification or that he was not responsible for his behavior. Petitioner described how he resorted to alcohol/cocaine use as a means to alleviate "stress." Although healthy coping skills are important, the lack thereof does not constitute a mental health condition.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with an Adjustment Disorder during his military service. The preponderance of available objective evidence failed to establish his purported cocaine use was the result of a MHC at the time of his military service or his in-service misconduct could be mitigated by a MHC."

g. Petitioner submitted enclosure (3), a rebuttal to the AO, in which counsel expanded his initial argument for clemency and argued that the AO failed to properly apply the guidance of reference (d).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of relief. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; additionally, the Board considered that the AO did not find that Petitioner's cocaine use was mitigated by a mental health condition notwithstanding his adjustment disorder. Regardless, the Board favorably considered his evidence of post-discharge rehabilitation and character and noted Petitioner's performance of duties was notably exceptional to have promoted as rapidly as his record reflects. Further, the Board took into consideration that his misconduct was all related to an underlying substance abuse disorder from which he has successfully recovered and maintained sobriety. As a result, the Board found that the totality of favorable matters in support of clemency outweighed the misconduct which resulted in Petitioner's punitive discharge. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief.

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 for mental health conditions, and

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that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board concluded his assigned reentry code of RE-4 remains appropriate based on his record of misconduct that makes him unsuitable for future naval service.

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 7 May 2004, his "General (Under Honorable Conditions)" discharge was issued under the authority of "MARCORSEPMAN par 6214" for the narrative reason of "Secretarial Authority" with a separation code of "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.

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.

8/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]