



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

██████████
Docket No: 2341-22
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) 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 with enclosures
(2) Advisory Opinion of 31 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 naval record be corrected to reflect an upgraded characterization of service.

2. The Board, consisting ██████████ ██████████, ██████████ ██████████, and ██████████ . ██████████, reviewed Petitioner's allegations of error and injustice on 8 April 2022, and pursuant to its regulations, determined 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, and applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered enclosure (2), the advisory opinion (AO) furnished by a 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. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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c. Petitioner enlisted and entered a period of active duty in the Marine Corps on 26 September 1989. He enlisted acknowledging pre-service marijuana use and an arrest for shoplifting.

d. Petitioner's DD Form 214 indicates he participated in Operation Desert Shield and Operation Desert Storm from 15 October 1990 to 8 April 1991.

e. On 6 January 1992, Petitioner was formally counseled for lack of motivation and "not carrying his pack."

f. Petitioner received a second formal counseling, on 28 January 1992, regarding his MOS proficiency, malingering, frequent misconduct with superiors, and disobedience of lawful written orders.

g. On 20 February 1992, Petitioner received a formal counseling and retention warning for unsatisfactory job performance; lack of attention to duty/detail; poor attitude, judgment, initiative, and motivation; frequent misconduct with superiors; and disobedience of lawful written orders.

h. Petitioner received a fourth formal counseling, on 9 March 1992, regarding constant irresponsibility in maintaining grooming and uniform regulations.

i. On 1 September 1992, Petitioner received a fifth formal counseling for lack of judgment, disrespect of superiors, disregard of military regulations and discipline, and involvement of a discreditable nature with military/civilian authorities.

j. On 9 September 1992, Petitioner received nonjudicial punishment (NJP) for a five hour unauthorized absence in violation of Article 86, Uniform Code of Military Justice (UCMJ).

k. Petitioner received a second NJP, on 20 November 1992, for wrongful use of marijuana in violation of Article 112a, UCMJ.

l. On 10 December 1992, Petitioner was notified of administrative separation processing by reason of misconduct due to drug abuse, did not consult with counsel, and waived an administrative discharge board.

m. Petitioner was discharged, on 4 January 1993, with an other than honorable characterization of service.

n. On 14 August 2019, the Department of Veterans Affairs (VA) diagnosed Petitioner with PTSD and Major Depressive Disorder. Petitioner was awarded service connection for these conditions on 23 March 2020 and evaluated at 70%. The VA further found his service was under honorable conditions for VA purposes.

o. Petitioner contends the VA diagnosed him with PTSD and Major Depressive Disorder and these conditions are related to his deployment during Operation Desert Shield and Operation

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Desert Storm. In his psychiatric evaluation, Petitioner reported traumatic military incidents he experienced while working with the combat service support detachment.

p. In support of his application, Petitioner provided three character references on his behalf, medical records, and VA decision documents.

q. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided enclosure (2). The AO noted that the Petitioner was granted service connection for PTSD by the VA and, although temporally remote from his military service, the available evidence indicated that his misconduct occurred after his return from deployment. The AO further noted that it is possible that irritability, disobedience, and marijuana use could be attributed to unrecognized symptoms of PTSD avoidance or hyperarousal. Consequently, the AO concluded there was post-service evidence of a diagnosis of PTSD that may be attributed to military service and there was some evidence that his misconduct could be attributed to PTSD.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief and that his characterization of service should be corrected to reflect Under honorable conditions (General). The Board, applying liberal consideration and relying on the AO, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition while in-service incurred, in part, due to military trauma experienced while deployed in support of Operation Desert Shield and Operation Desert Storm. The Board concurred with the AO and understood the conclusion to state there was some evidence Petitioner's misconduct could be attributed to PTSD. In its deliberations, the Board noted that Petitioner served without incident for approximately two years and four months, and that all of his misconduct occurred post-deployment; however, determined that not all of his misconduct was attributed to his condition. Specifically, during 1992, Petitioner was formally counseled on five occasions for multiple deficiencies. In particular, Petitioner was repeatedly counseled for frequent misconduct with superiors, as well as disrespect of superiors and involvement of a discreditable nature with military/civilian authorities. Based on the chronology of events and the nature of some of Petitioner's misconduct, the Board found that a nexus exists between the incidents experienced by Petitioner and his misconduct. Despite this conclusion, the Board found Petitioner's extended period of misconduct serious enough to preclude a recommendation for a full upgrade to Honorable. As a result, despite not excusing all of his misconduct, the Board determined that his mental health condition sufficiently mitigated the misconduct to merit an upgrade in his characterization of service to Under honorable conditions (General). Additionally, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason for separation, separation authority, and separation code should be changed to "Secretary of the Navy Plenary Authority."

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RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as “Under honorable conditions (General),” that the narrative reason for his separation was “Determination of Service Secretary – Secretary of the Navy Plenary Authority,” that his separation authority was “MARCORSEPMAN par. 6214,” and that his separation code was “JFF1.”

That no further corrective action should be taken.

That 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.

4/11/2022

X [REDACTED]
[REDACTED]
Executive Director
Signed by [REDACTED]