



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

[REDACTED]
Docket No: 2342-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

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 22 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 that his discharge under other than honorable conditions be upgraded to "Honorable" and that his narrative reason for separation and separation code be changed to reflect Secretarial plenary authority.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 29 June 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.

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 16 February 1988. In 1991, Petitioner deployed to [REDACTED] during which he served as an aircrew chief in 26 assault support missions to include medivac flights, combat resupply, and

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heliborne assaults under hazardous conditions, earning combat aircrew wings with a combat star and an Air Medal with strike numeral "3."

c. Petitioner was counseled, on 1 July 1992, for failing his physical readiness test and exceeding weight control standards. On 14 April 1993, after over 5 years of service without incident, he received a Medical Board notification that the anticipated disposition of his medical board would be 6-months' limited duty as a result of a right tibia/fibula fracture. That same day, his command received notification of a Naval Drug Lab message reporting Petitioner's urinalysis positive for marijuana metabolites.

d. Petitioner was notified of administrative separation processing for misconduct due to drug abuse on 25 May 1993; he waived his right to a hearing after consultation with counsel and elected not to make a statement. On 23 June 1993, Petitioner accepted nonjudicial punishment (NJP) for a single violation of Article 112a for use of marijuana, a controlled substance, on or about 5 April 1993.

e. During the course of his administrative separation processing, multiple members of Petitioner's chain of command submitted statements with respect to disposition of his case. A sergeant, who had previously been Petitioner's peer while deployed, recommended that Petitioner's discharge should reflect his entire service record, his commitment to his fellow Marines, and the honor in which he served his country, affirming that Petitioner had been an outstanding Marine, demonstrating dedication, sacrifice, and tremendous work ethic, to include providing the leadership and guidance that assisted the sergeant in earning a meritorious combat promotion to corporal and serving as a key factor in the squadron's mission success. His staff sergeant described him as a proficient, dedicated "can-do" Marine with top-notch performance focused on mission accomplishment, to include combat operations, recommending that he be discharged under honorable conditions. His officer-in-charge likewise recommended that he receive a General (Under Honorable Conditions) discharge based on his past exceptional performance as a crew chief and mechanic. Petitioner's commanding officer, however, highly recommended that Petitioner be discharged under Other Than Honorable conditions, "in accordance with ALMAR 246/92," and he was discharged, on 9 August 1993, following approval by the Commanding General, 3D Marine Aircraft Wing. At the time of his discharge, his average proficiency and conduct marks from his 5 years, 5 months, and 23 days of service were 4.6/4.6.

f. Petitioner contends, through counsel, that his combat experience during [REDACTED] was harrowing, dangerous, and stressful, resulting in symptoms of post-traumatic stress disorder (PTSD) to include despondency, recklessness, hopelessness, depression, anxiety, anger, and sleep problems. In support of his contentions, he identifies his documented in-service mental health records for symptoms of nervousness and stress as evidence of unrecognized and undiagnosed PTSD. He contends that his mental health condition mitigates his misconduct of a single incident of marijuana use and that the overall length and quality of his service would have otherwise merited an honorable characterization. Additionally, Petitioner provides a letter from his clinical counselor, a letter from his family medicine doctor, post-discharge medical care and treatment records from UCHealth, and character letters. One of Petitioner's letters, from an Army combat veteran with whom he works, praises his post-discharge integrity, character and

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leadership, stating that Petitioner displays military values on a daily basis. The second letter from an in-service peer describes that Petitioner was the most junior in rank of the combat aircrew chiefs during their deployment but that he excelled in his performance of duty and helped other Marines achieve excellence. He notes a variety of additional life stressors at the time of petitioner's misconduct, to include the death of a family member, birth of his son, and dissolution of his marriage, describing Petitioner as a professional and dedicated Marine who suffered a lapse of judgment in an otherwise stellar record.

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

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, his civilian providers have determined a diagnosis of PTSD that has been attributed to military service and have provided treatment for Major Depressive Disorder that is temporally remote from his military service. They have opined that the Petitioner's in-service substance use was an attempt to self-medicate unrecognized symptoms of PTSD. Although the described symptoms of PTSD are not detailed or specific to PTSD, it is possible that his marijuana use could have been an attempt at self-medication.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that 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 may be attributed to PTSD."

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 partial 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; however, the Board concurred with the AO with respect to Petitioner's diagnosis of PTSD as being attributable to his military service and, based on available clinical evidence, serving as a mitigating factor with respect to his misconduct. Additionally, the Board favorably considered the overall length and exceptional quality of Petitioner's service, which is well documented in his official records and supplemented by his supporting documents, the nature of Petitioner's misconduct, and the fact that he has some evidence of post-discharge character and rehabilitation. Accordingly, the Board determined that it is in the interest of justice to grant partial relief in the form of upgraded characterization of service to General (Under Honorable Conditions) with associated changes to his narrative reason for separation, separation code, and reenlistment code.

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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 and/or performance 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. In making this finding, the Board considered that the command recommendations praising Petitioner's service favored a General (Under Honorable Conditions) characterization, not a fully Honorable discharge. The Board concurred with those contemporary observations and similarly concluded that the relative weight of all favorable factors against Petitioner's misconduct is sufficient to meet the criteria of General (Under Honorable Conditions) but not an Honorable.

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 9 August 1993, his "General (Under Honorable Conditions)" discharge was issued for the narrative reason of "Secretarial Authority" under the authority of "MARCORSEPMAN par 6214" with a separation code of "JFF1" and reentry code of "RE-1."

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.

7/14/2022

[REDACTED]
Executive Director
[REDACTED]