



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

█
Docket No: 2545-22

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) 10 U.S.C. §1552
(b) SECDEF memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (TBI)," of 24 February 2016
(d) USD memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017
(e) USD memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149
(2) Case summary
(3) Advisory opinion of 6 June 2022

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 by upgrading his discharge characterization from General (Under Honorable Conditions) to Honorable. Enclosures (2) and (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 27 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, and applicable statutes, regulations, and policies, and references (b) through (e), which 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 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or

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traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (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 (3), the 6 June 2022 advisory opinion (AO) furnished by a qualified mental health provider.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the 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. The Petitioner enlisted in the Marine Corps and began a period of active duty on 30 March 1971. On 12 November 1971, Petitioner was counseled for personal appearance. He was advised that failure to take corrective action could result in administrative separation. From a period beginning on 6 December 1971 to 1 March 1972, Petitioner received nonjudicial punishment (NJP) on four occasions for the following offenses: disobeying a lawful order from a commissioned officer, disobeying a lawful order from a noncommissioned officer, and three instances of failure to report to appointed place of duty. On 17 March 1972, Petitioner was diagnosed by a medical officer with character disorder with immature personality. On 6 April 1972, Petitioner received a fifth (NJP) for failure to report to prescribed place of duty. On 1 May 1972, Petitioner was notified of the initiation of administrative separation proceedings by reason of unsuitability due to character behavior disorders. On 10 May 1972, the Petitioner's administrative separation proceedings were determined to be sufficient in law and fact. On 22 May 1972, the discharge authority approved a General (Under Honorable Conditions) discharge characterization of service by reason of unsuitability. On 9 June 1972, Petitioner was discharged.

c. The Petitioner contends he was enduring both mental and emotional stress which caused him to make bad decisions about his career in the USMC. He asserts that his condition affected his performance as a Marine and he was not mentally prepared to fight his discharge. Since his separation from service, Petitioner have completed a 35 year career with the [REDACTED] Department of Corrections and retired as the Assistant Warden. Petitioner feels that the decision to discharge him from service was in part attributed to a reduction in force following the ending of the [REDACTED] conflict and he would have earned an Honorable discharge if allowed to continue.

d. In light of the Petitioner's assertion of a mental health condition, the Board requested enclosure (3). The AO stated in pertinent part:

During military service, he was evaluated and diagnosed with a personality disorder, indicating characterological traits rendering military service unsuitable. By definition, a personality disorder is a lifelong condition that is neither incurred

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in nor exacerbated by military service. His diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, he has provided no medical evidence in support of an alternate mental health condition. His personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct.

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 review and consideration of all the evidence of record, and in view of references (b) through (e), as well as enclosure (3), the Board concludes that Petitioner’s request warrants partial relief.

The Board determined that it would be an injustice to label one’s discharge as being for a diagnosed character and behavior disorder. Describing Petitioner’s service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner’s narrative reason for separation should not be labeled as being for a mental health-related condition and should be changed to “Secretarial Authority” with associated changes to his separation authority and separation code.

Notwithstanding the recommended relief, based upon the Board’s review, they concluded potentially mitigating factors in Petitioner’s case were insufficient to support an upgrade to his characterization of service. Specifically, the Board determined that his misconduct, as evidenced by the five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner’s misconduct that showed a complete disregard for military authority and regulations. In reaching its decision, the Board also concurred with the AO’s finding that the Petitioner’s misconduct while on active duty could not be attributed to a mental health condition. As a result, the Board concluded significant negative aspects of Petitioner’s conduct outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner’s characterization of service or granting clemency in the form of an upgraded characterization of service.

Similarly, the Board also concluded that Petitioner’s narrative reason for separation remains appropriate. The Board found no evidence that Petitioner was not mentally responsible for his misconduct and concluded that he remains unsuitable for military service.

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

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RECOMMENDATION

In view of the above, the Board directs the following corrective action: Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting a change to his narrative reason for separation to "Secretarial Authority," separation code was "JFF1," and his separation authority was "MARCORSEPMAN 6214."

That no further changes be made to Petitioner's record.

A copy of this report of proceedings shall 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/17/2022

[REDACTED]
Executive Director
[REDACTED]