



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

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Docket No: 2774-22

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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Ref: (a) 10 U.S.C. §1552

(b) "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD" of 3 September 2014

(c) "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or 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 (Kurta Memo)

(e) USECDEF 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 with enclosures

(2) Case summary

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 General (Under Honorable Conditions) (GEN) characterization be upgraded, his reentry code changed, his narrative reason for separation be changed, and his rank be reinstated to E-4.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 19 September 2022, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD)(Hagel 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). As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and

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provided the Board with an Advisory Opinion (AO) on 31 May 2022. Petitioner provided rebuttal evidence in response to the AO.

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, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the U.S. Marine Corps and entered active duty on 1 December 1998. On 28 March 2000, Petitioner received nonjudicial punishment (NJP) for failing to obey a lawful order and disobeying a lawful order to not drive his vehicle while his license was suspended. On 21 October 2000, Petitioner received a second NJP for failing to obey another lawful order by wrongfully failing to provide spousal support. On 01 November 2001, Petitioner received a third NJP for being in an unauthorized absence (UA) status from his appointed place of duty, three specifications of disobeying a lawful order. On 8 January 2002, Petitioner was counseled for the violations which led to his second NJP. He was further advised that failure to take corrective action may result in administrative separation or limitation of further service. On 19 December 2001, Petitioner was found guilty at a summary court-martial (SCM) of UA from his appointed place of duty and sentenced to be confined for 30 days and to forfeit \$779.00 pay per month for one month. On 23 May 2002, Petitioner, via his military counsel, signed a pre-trial agreement to enter a voluntary plea of guilty to charges and specifications of violation of a lawful order, false official statement, and breaking restriction, provided the convening authority agreed to withdraw the charges and specification from the pending special court-martial (SPCM). Petitioner further agreed to waive his right to an administrative discharge board. On 29 May 2002, the pre-trial agreement was approved and Petitioner subsequently was notified of his pending administrative processing by reason of pattern of misconduct, at which time he waived his procedural rights. On 4 June 2002, Petitioner received a fourth and final NJP for the aforementioned charges. On 7 June 2002, Petitioner's commanding officer (CO) recommended to the separation authority that Petitioner be separated with an Other Than Honorable (OTH) characterization by reason of pattern of misconduct. After Petitioner's case was found to be sufficient in law and fact, on 11 July 2002, the separation authority directs Petitioner be discharged with an OTH for POM. On 19 July 2002, Petitioner was so discharged.

d. Petitioner previously applied to the Naval Discharge Review Board (NDRB) on two occasions. His first application was denied on 24 February 2004 after the NDRB determined his discharge was proper as issued. Subsequently, Petitioner reapplied and received an upgrade to his characterization of service to GEN on 25 May 2011.

e. Petitioner contends he incurred PTSD and other mental health concerns during military service. He adds he was suffering from mental health issues and family problems as a young Marine, made several suicide attempts, and went to family advocacy counseling but did not

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receive the help he needed as he was misdiagnosed. He asserts his unit had him sign documents requesting to be discharged but he did not realize what this would do to his life.

f. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with an advisory opinion (AO). The AO stated 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. Post-service, he has been diagnosed with a trauma-related disorder that has been attributed to military service. Unfortunately, his personal statement and available records are not sufficiently detailed to provide a nexus with his misconduct. It is unclear how repeated driving without a license, spousal conflict, and domestic violence could be attributed to trauma symptoms. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD/trauma-related mental health condition that may be attributed to military service. There is insufficient evidence his misconduct may be attributed to PTSD or another mental health condition."

g. On 13 September 2022, the Board received Petitioner's rebuttal in response to the AO where he provided additional documentation for consideration to include medical documents dated February 2002.

h. As part of his application, Petitioner submitted documents from his official military personnel file, a statement, and medical and Department of Veterans Affairs documents for consideration. For the purposes of clemency, Petitioner provided advocacy letters.

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 favorable action in the form of partial relief. Specifically, in the interests of justice and purely as a matter of clemency, the Board determined Petitioner's narrative reason for separation, separation authority, separation code, and reentry code should be changed.

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

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conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Ultimately, the Board determined the clemency action taken by the NDRB and that recommended below was sufficient to address any issues of injustice in Petitioner's record.

With regard to the Petitioner's request that his rank of E-4 be reinstated, the Board determined relief is not warranted. The Board found no error with the punishments imposed by the NJPs and similarly concluded that no additional clemency was required to address any injustice issues in Petitioner's record.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 indicating a "Secretarial Authority" narrative reason for separation, "RE-1" reenlistment code, "JFF1" separation code, and "MARCORSEPMAN Para 6207" separation authority.

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.

9/29/2022

[REDACTED]