



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

█
Docket No: 2806-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ USMC

Ref: (a) Title 10 U.S.C. §1552
(b) USD Memo of 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) BCNR Advisory Opinion (AO) of 16 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 the characterization of service from “Bad Conduct Discharge” (BCD) to “Honorable,” and that his Certificate of Release or Discharge from Active Duty (DD Form 214) be corrected to reflect his High School Equivalency certificate. Enclosures (2) and (3) apply.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 1 August 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.

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. During Petitioner's enlistment processing he disclosed minor traffic violations for which he was granted an enlistment waiver. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 7 July 1978. Petitioner began a period of unauthorized absence (UA)

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from 1 January 1979 until he was apprehended on 24 April 1979. On 31 May 1979, Petitioner was found guilty at a special court-martial of the aforementioned UA and sentenced to confinement at hard labor for three months, forfeiture of \$100.00 pay per month for three months, and reduction in rank to E-1. Subsequently, Petitioner's confinement at hard labor totaling greater than one month and forfeitures were suspended for a period of four months. On 8 June 1979, Petitioner submitted a hardship discharge request due to the failing health of his parents and the financial distress of his wife and child but later withdrew his request. Petitioner then commenced three separate periods of UA, from 31 July to 10 August 1979 (10 days), from 14 August to 19 September 1979 (36 days), and from 10 to 16 November 1979 (6 days), each period of UA ending in his surrender. On 10 December 1979, Petitioner was found guilty at a second SPCM of three specifications of UA and sentenced to confinement at hard labor for 45 days, forfeiture of \$100.00 pay per month for six month, and a bad conduct discharge (BCD). On 11 December 1979, Petitioner waived his right to request a restoration to full duty, adding he does not desire to return to duty. On 17 December 1979, a brig report documents Petitioner was found not to be psychotic, neurotic, or suicidal. On 29 December 1981, Petitioner was discharged with a BCD.

d. Post-discharge, Petitioner submitted a request via this Board to upgrade his discharge to General (Under Honorable Conditions) (GEN). He contended that he was suffering from Post-Traumatic Stress Disorder (PTSD), Obsessive Compulsive Disorder (OCD) from a childhood incident, Attention Deficit/Hyperactivity Disorder, and Adult Antisocial Behavior. On 28 August 2012, the Board denied his request after determining these factors were not sufficient to warrant recharacterization of Petitioner's discharge given his misconduct.

e. Based on Petitioner's assertion that he incurred a mental health condition during military service, which may have mitigated the circumstances that led to his discharge character of service, a qualified mental health professional reviewed Petitioner's request for correction to his record and provided the Board with enclosure (3). The AO stated, in pertinent part:

During military service, the Petitioner was evaluated and there was no evidence of a mental health condition. Post-service, he has received diagnoses of Post-Traumatic Stress Disorder (PTSD) and other mental health conditions that are temporally remote to military service and do not appear to be related to his service. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct. 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, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

f. Petitioner submitted his High School Equivalency certificate, a transcript from Mortuary College, proof of embalmers license from the state of [REDACTED] two college transcripts, a Truck

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Driver Institute, Inc. certificate, a Bloodborn Pathogens Exposure training certificate, an entry-level driver training certificate, character letters, and clinical notes for consideration.

CONCLUSION:

Upon review and consideration of all the evidence of record, and in light of reference (c), the Board found the existence of an error warranting relief.

The Board determined it was in the interests of justice to correct Petitioner's DD Form 214 to reflect he achieved his High School Equivalency certificate while in the Marine Corps.

Notwithstanding the recommended relief, based upon their review, the Board concluded Petitioner's potentially mitigating factors were insufficient to upgrade his characterization of service. Specifically, the Board determined Petitioner's misconduct, as evidenced by his SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct that included multiple periods of long-term UAs. Further, the Board considered that Petitioner was already provided clemency by the Marine Corps when they suspended a portion of his first SPCM sentence. Finally, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD characterization. Even though the Board commended Petitioner's post-discharge accomplishments and good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service or granting clemency in the form of an upgraded characterization of service.

RECOMMENDATION:

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

A Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) be issued to Petitioner adding his High School Equivalency certificate.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/17/2022

[REDACTED]

Executive Director

[REDACTED]