



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

[REDACTED]
Docket No: 2812-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] 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 w/ enclosures
(2) Advisory Opinion (AO) of 3 Jun 22
(3) Rebuttal of 30 Jun 22
(4) AO Response of 12 Jul 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 punitive discharge be upgraded to "Honorable," his narrative reason for separation and separation code be changed to reflect "Secretarial Authority," and his reentry code be changed to RE-1. Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 August 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 after receiving a drug use waiver and began a period of active duty on 3 May 2004. Later that year, he was placed on the liberty risk program and counseled for Article 134 disorderly conduct and drunkenness after becoming engaged in a drunken brawl with fellow service members. He subsequently deployed to combat in support of Operation Iraqi Freedom from January 2005 through September 2005.

c. On 15 December 2005, Petitioner received nonjudicial punishment (NJP) for a violation of Article 91 by using disrespectful language and provoking gestures toward a noncommissioned officer. The next day, he was counseled for failing a test due to lack of effort; he left only 10 minutes after the test began.

d. Prior to deploying in support of humanitarian relief in Indonesia in June of 2006, Petitioner completed a preventative health assessment which identified that he had deployed in support of combat operations and identified that he had risk factors for / symptoms of combat stress that indicated a need for further screening. However, during a subsequent periodic health assessment, he stated that he had no unresolved deployment related issues or health concerns. Notwithstanding that denial, he underwent intensive outpatient alcohol rehabilitation during August of 2006 after being diagnosed alcohol dependent.

e. Petitioner served the next year without incident until August of 2007, at which time he became involved in a drunken brawl between multiple Marines. On 30 November 2007, Petitioner was tried before General Court-Martial pursuant to a pre-trial agreement. He pleaded guilty to violations of: a lesser included offense of a charged Article 124 (maiming) by the aggravated assault of a private first class with a means and force likely to cause death or grievous bodily harm; Article 128 (assault) by striking a second private first class with a closed fist; and, Article 134 (drunk and disorderly conduct of a nature to bring discredit upon the naval service). He pleaded and was found not guilty to a second specification of Article 128 and to the primary offense under Article 124. He was sentenced to 24 months confinement, reduction to E-1, and a Bad Conduct Discharge (BCD).

f. The findings and sentence of Petitioner's GCM were affirmed on appellate review. His BCD was ordered executed and he was discharged, on 21 October 2008, with final proficiency and conduct marks of 4.1/4.1.

g. Petitioner contends through counsel that that he was a loyal, competent Marine. He experienced the highs and lows of combat during Operation Iraqi Freedom and successfully completed his tour but returned grieving the loss of his best friend and subsequently turned to alcohol as an outlet for his emotional distress. He was diagnosed with post-traumatic stress disorder (PTSD) but indicates the initial diagnosis referred to his condition as "minor" and states that he felt embarrassed that other Marines might find out about his condition. As a result, he states he ignored his mental health struggles and began abusing alcohol. He subsequently deployed for humanitarian aid in Indonesia, where his experiences there brought back the trauma he experienced in combat, triggered his PTSD, and worsened his drinking in spite of his efforts at alcohol rehabilitation. During the fight which resulted in his Bad Conduct Discharge (BCD), he describes that several friends of his got into a fight with other Marines and that he saw one of

them reach into a pocket for what he thought was a knife. He states that he reacted to the perceived threat without thinking. Post-discharge, Petitioner went to Veterans Treatment Court following a domestic violence incident and has since sought mental health care for his PTSD, to include medication and in-patient therapy, to stay on track in managing his anger and symptoms.

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

Petitioner was diagnosed with PTSD, Alcohol Dependence, and antisocial personality traits during his military service. Prior to his deployment, the Petitioner demonstrated a propensity to engage in fights and excessive alcohol consumption (i.e., Motor Transportation Operator School incident, the October and November 2004 ARIs). It is possible his purported trauma experiences exacerbated his alcohol use, resulting in additional altercations. It is possible his citations for disrespect and test failure could be attributed to PTSD symptoms of irritability, given those were not behaviors displayed prior to the purported trauma.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is evidence of a diagnosis of PTSD that may be attributed to military service; however, there is insufficient evidence all of his misconduct may be attributed to PTSD.”

i. Petitioner submitted enclosure (3), a rebuttal to the AO, in which counsel reiterated the policy guidance of the references (b) through (e).

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, especially to the extent that his misconduct involved actions of violence which resulted in harm to his fellow service members. However, the Board concurred with the AO and concluded that Petitioner’s traumatic experiences during combat and further aggravated by triggers during his subsequent deployment exacerbated his alcohol use and PTSD symptoms, resulting in the altercation which led to his BCD. Likewise, the Board concurred that his disrespect and test failure were inconsistent with his pre-deployment behavior and are reasonable attributed to PTSD symptoms of irritability. However, the Board also agreed with the AO that Petitioner’s misconduct prior to his deployment would not be mitigated by combat-induced PTSD. Although the Board did not feel full relief was appropriate in light of the AO’s observation that Petitioner’s pre-deployment misconduct reflected a predisposition for becoming violent while drinking, the Board found that his combat-related PTSD exacerbated this condition sufficiently to outweigh the misconduct which resulted in Petitioner’s punitive discharge. Accordingly, the Board determined that it is in

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the interest of justice to grant the partial relief in the form of an upgraded discharge to General (Under Honorable Conditions).

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. For similar reasons, the Board concluded Petitioner's narrative reason for separation, separate code, and reentry code remain appropriate. The Board found no evidence that Petitioner was not mentally responsible for his misconduct and concluded he received sufficient mitigation/clemency through the upgrade to his characterization of service.

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, for the period ending on 21 October 2008, he received a "General (Under Honorable Conditions)" discharge.

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further changes be made to Petitioner's 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.

8/31/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]