



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

█
Docket No: 3422-22

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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory Opinion 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 an upgrade of his characterization of service. Enclosures (2) and (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 7 September 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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 10 December 2001. On 5 November 2002, Petitioner received an administrative counseling concerning deficiencies in his performance and conduct.

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d. On 30 July 2003, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) totaling three days.

e. On 14 May 2004, Petitioner convicted by a special court-martial (SPCM) of UA totaling 71 days and wrongfully wearing earrings. As punishment, Petitioner was sentenced to confinement, forfeiture of pay and reduction in rank.

f. On 14 April 2005, Petitioner received NJP for UA totaling 326 days.

g. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

h. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Marine Corps. On 13 May 2005, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

i. On 20 December 2007, the Naval Discharge Review Board (NDRB) reviewed Petitioner's request for an upgrade of his discharge characterization and determined his discharge was properly issued.

j. Petitioner contends that he incurred post-traumatic stress disorder (PTSD) in March of 2003 when he witnessed his first combat casualties. Petitioner asserts that he was a perfect Marine before going to war and that it changed him. Petitioner further states he had a rough time with family members dying and trying to control his emotions after the war.

k. For purposes of clemency consideration, the Board noted Petitioner provide an advocacy letter but no supporting documentation describing post-service accomplishments.

l. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is temporally remote to his military service and not consistent with his service record. His statement is not sufficiently detailed to establish clinical symptoms or provide 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.

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[REDACTED]

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner’s request warrants partial relief in the interests of justice.

In regard to Petitioner’s request for an upgrade of his characterization of service, the Board found no error in Petitioner’s OTH characterization of service discharge for separation for misconduct due to commission of a serious offense. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (d).

The Board applied liberal consideration to Petitioner’s mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) and (c), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (d). In this regard, the Board did not believe that relief is warranted under the totality of the circumstances given the seriousness of Petitioner’s misconduct. In making this finding, the Board considered the seriousness of Petitioner’s misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command. Furthermore, the Board concurred with the AO that there is insufficient evidence Petitioner’s misconduct could be attributed to PTSD. In addition, 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. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. The Board concluded by opining that Petitioner’s conduct constituted a significant departure from that expected of a Marine, even under the liberal consideration standards for mental health conditions, and continues to warrant an OTH characterization. As a result, 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.

However, after a thorough review of the record and all supporting documentation, the Board determined that Petitioner’s record is in error. The Board noted that Block 12 (Record of Service) of the Certificate of Release or Discharge From Active Duty (DD Form 214) inaccurately reflects Block 12a, Petitioner’s Date Entered AD This Period as “2003 01 17.” In this regard, the Board determined that the error was administrative and concluded that Block 12a of the DD Form 214 should accurately reflect his Date Entered AD This Period as “2001 12 10.”

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RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 215 reflecting Block 12a to read "2001 12 10." HQMC is directed to make any corresponding changes to Blocks 12c-g as required.

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

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

4. It is certified that 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

Executive Director
[REDACTED]