



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: 3496-22

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) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)
(c) PDUSD Memo, "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 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(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 discharge be upgraded from "Other than Honorable" to "Honorable" characterization of service, that his narrative reason for separation be changed from "Misconduct" to "Secretarial Authority," and his reentry code be changed from "RE-4B" to "RE-1" on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 17 October 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 including references (b) through (e). In addition, the Board considered the advisory opinions (AO) furnished by qualified mental health provider and the additional material submitted by the Petitioner in response to the AO.

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[REDACTED]

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, the statute of limitations was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the United States Marine Corps and began a period of active service on 12 June 2006. Petitioner's pre-enlistment physical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. Petitioner was awarded the [REDACTED] Campaign Medal (w/ Bronze Star Service) for his service during [REDACTED]. Upon return from deployment, Petitioner was attached to [REDACTED].

e. On 12 December 2008, Petitioner pleaded guilty at a Summary Court Martial (SCM) for violation of Uniform Code of Military Justice Article 112(a), wrongful use of a controlled substance, to wit: amphetamines.

f. On 10 February 2009, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his right to consult with qualified counsel and to a hearing before an Administrative Separation Board. Petitioner was notified that the least favorable characterization of service was an Other than Honorable (OTH) characterization.

g. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) , reveals that he was separated from the Marine Corps on 10 April 2009 with an OTH characterization of service, his narrative reason for separation is "Misconduct," his separation code is "HKK1," and his reenlistment code is "RE-4B."

h. Petitioner contends that he incurred Post Traumatic Stress Disorder (PTSD) during his military service resulting in self-medication. Specifically, Petitioner states that following his overseas service in Iraq, he fell into a depression and sought out medical treatment.

i. For purposes of clemency consideration, Petitioner provided documentation in the form of an application for relief drafted by his legal counsel, character letters, post-service education, portions of his OMPF, and medical documents pertaining to his PTSD diagnosis.

j. In connection with Petitioner's assertion that he incurred PTSD during military service, which might have mitigated the circumstances that led to his discharge character of service, the Board requested and reviewed an Advisory Opinion (AO) provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued an AO dated 30 June 2022. The AO stated in pertinent part:

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[REDACTED]

There is no evidence Petitioner was diagnosed with a mental health condition during his service. Documentation supporting a post service diagnosis of PTSD was illegible. Petitioner reported symptoms of depression, anxiety, nightmares, suspiciousness, panic attacks, impaired judgment, and issues developing personal relationships within his application and occurring after his return from deployment. The symptoms of PTSD referenced would be inconsistent with amphetamine use for relief. As a stimulant, it would result in increased heart rate and trigger many of the physical sensations typically feared by individuals who suffer from anxiety symptoms.

The AO concluded, "it is my considered clinical opinion, there is insufficient evidence of a diagnoses of PTSD that may be attributed to military service, or that his in-service misconduct could be attributed to PTSD."

k. Petitioner submitted a rebuttal to the AO, providing legible documentation supporting a post-service diagnosis of PTSD and submitting that the Petitioner's choice of drug does not eliminate the link between his PTSD and misconduct. Petitioner contends that he did not have the forethought to know how the effects of the drug would impact his PTSD symptoms and that he was seeking any way to self-medicate.

l. After review of the supplemental documents provided by the Petitioner, a revised AO was submitted on 22 August 2022, which concluded, "it is my considered clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD." Specifically, "there is insufficient evidence to attribute his misconduct to self-medication attempts. As noted previously, amphetamine is not a typical substance to induce symptoms that would soothe unrecognized symptoms of PTSD. There is no evidence he was unaware of his misconduct or not responsible for his behavior."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references (b) through (e), after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action directed below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and how service-related traumatic events may have impacted his behavior. The Board also relied on the AO, which concluded that there is sufficient evidence of a post-service diagnosis of PTSD that may be attributed to military service. However, The Board also determined that the evidence of record did not demonstrate that Petitioner was not

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[REDACTED]

mentally responsible for his conduct or that he should otherwise not be held accountable for his actions.

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 that significant 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 even though flawless service is not required for an Honorable discharge, the Board determined that a General (Under Honorable Conditions) discharge characterization is appropriate in this case.

Additionally, the Board concluded Petitioner's narrative reason for separation, separation authority, and reentry code should remain unchanged based of their assessment that he was aware that he was committing misconduct at the time of the drug use and that he continues to be unsuitable for continued military service. Ultimately, even in light of references (b) through (e), the Board still concluded that insufficient evidence of an error or injustice exists to warrant changing Petitioner's narrative reason for separation, separation authority, or reentry code to reflect a Secretarial Authority discharge or granting further clemency in his case beyond the recommended corrective action below.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating the character of service as "General (Under Honorable Conditions)."

No further changes be made to Petitioner's record.

That 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 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.

10/20/2022
[REDACTED]
[REDACTED]