



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

█
Docket No: 3790-22

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) 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 naval record be corrected to upgrade his characterization of service and to make other conforming changes to his discharge.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 8 July 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, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider.

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 interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the U.S. Marine Corps and commenced active duty on 17 July 2001. Petitioner's enlistment physical, on 10 January 2001, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. As part of Petitioner's enlistment application, on 8 January 2001, he signed and acknowledged the "Statement of Understanding Marine Corps Policy Concerning Illegal Use of Drugs."

d. On 21 July 2001, Petitioner's command issued him a "Page 11" counseling warning (Page 11) documenting underage drinking. The Page 11 expressly warned him that a failure to take corrective action may result in administrative separation or limitation on further service. Petitioner did not submit a Page 11 rebuttal statement.

e. However, Petitioner received non-judicial punishment (NJP), on 24 January 2002, for failing to obey a lawful order for underage drinking occurring. Petitioner did not appeal his NJP.

f. Following a positive urinalysis test result in late May 2005, on 13 June 2005, Petitioner received NJP for the wrongful use of a controlled substance (marijuana) while he was on terminal leave. Petitioner did not appeal his NJP.

g. On 14 June 2005, Petitioner's command notified him that he was being processed for an administrative discharge by reason of misconduct due to drug abuse, and misconduct due to the commission of a serious offense. Petitioner consulted with counsel elected his right to a hearing before an administrative separation board (Adsep Board).

h. On 6 July 2005, an Adsep Board convened to hear Petitioner's case. At the Adsep Board Petitioner was represented by a Marine Corps Judge Advocate. Following the presentation of evidence and witness testimony in the case, the Adsep Board members determined the Petitioner committed the misconduct as charged and recommended his separation from the Marine Corps with an Other Than Honorable (OTH) characterization of service. Ultimately, on 16 July 2005, the Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4B reenlistment code.

i. On 23 April 2009, the Naval Discharge Review Board (NDRB) denied Petitioner's initial application for relief. The NDRB determined that Petitioner's discharge was proper as issued

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and that no change was warranted. Petitioner did not make any mental health-related contentions with his application.

j. However, on 17 June 2014, the NDRB granted Petitioner partial relief and upgraded his characterization of service to General (Under Honorable Conditions) (GEN), but did not change the narrative reason for separation. Petitioner had contended, in part, that his [REDACTED] deployment led to his PTSD and marijuana use.

k. In short, Petitioner contended that he was suffering from PTSD following his deployment to Iraq and was self-medicating with marijuana. Petitioner argued that PTSD was a causative factor for the behavior underlying his OTH discharge, and that the Board must view his mental health condition as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

l. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 5 July 2022. The Ph.D. stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. In contrast, he provided post-service documentation of a PTSD diagnosis. While substance use is a typical maladaptive coping skill person's resort to when experiencing stress and mental health symptoms, there is no evidence Petitioner was unaware of his misconduct or not responsible for his behavior.

The Ph.D. concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is post-service evidence of PTSD that can be attributed to military service. There is post-service evidence his misconduct may be attributed to PTSD."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants partial relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that Petitioner's service-connected mental health issues mitigated some, but not all, of the misconduct used to characterize his original OTH discharge. The Board noted that some of Petitioner's misconduct and documented performance deficiencies occurred well before his first OIF/OEF deployment in 2003. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors for some of the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board concluded that no useful purpose was served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that an upgrade to "General (Under Honorable Conditions)" (GEN), but no higher was warranted. Thus, the Board concurred with the NDRB's discharge upgrade determination that a GEN may have been proper, but not an Honorable characterization of service for the reasons set

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forth below.

The Board was not willing to grant a full upgrade to an Honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board determined that characterizations under OTH or GEN are generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge to honorable solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Lastly, the Board also carefully considered any matters submitted regarding Petitioner's character, post-service conduct and personal/professional accomplishments. However, even in light of the Wilkie Memo and reviewing the record holistically, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and as a matter of clemency, that the Petitioner merited a GEN characterization of service and no higher.

Notwithstanding the discharge upgrade denial, the Board did determine purely as a matter of clemency to change the narrative reason for separation, separation authority, and separation code on Petitioner's DD Form 214 to remove the negative inference associated with misconduct. The Board, however, did not find a material error or injustice with the Petitioner's original RE-4B reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances involving drug use, and that such reentry code was proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner's narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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

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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.

7/13/2022

[REDACTED]