



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: 4313-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX XX █ 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 discharge be upgraded from "Other than Honorable" to "General (Under Honorable Conditions)" characterization of service on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 December 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 opinion (AO) furnished by qualified mental health provider. The Petitioner was offered an opportunity to respond to the AO but chose not to do so.

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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 1 February 1973. Petitioner's enlistment application reported pre-service arrests for driving while intoxicated, drunk pedestrian, and breaking "liquor curfew."

d. On 3 July 1973, Petitioner was awarded nonjudicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a 24-day period of unauthorized absence from his unit.

e. On 17 July 1973, Petitioner began a period of UA from his unit and remained absent until 4 January 1974, when he was apprehended by law enforcement.

f. Upon his return to military custody, Petitioner's Commanding Officer (CO) served him with court martial charges for violation of UCMJ Article 86, for his period of UA. On 13 February 1974, Petitioner submitted a request for discharge in lieu of trial by General Court Martial (GCM).

g. On 4 March 1974, Petitioner's CO positively endorsed the request for discharge in lieu of court martial. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that he was separated from the Marine Corps on 22 March 1974 with an OTH characterization of service in lieu of trial by court martial and assigned an RE-4 reenlistment code.

h. Petitioner contends that he was an alcoholic during service and is currently in recovery. He explains that he was drinking in an effort to self-medicate because of trauma and couldn't get focus or self-control. Petitioner affirms that after the military he got his life together and became an upstanding citizen.

i. For purposes of clemency and equity consideration, Petitioner provided a character letter from a friend which discussed Petitioner's sobriety.

j. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 22 September 2022. The Ph.D. noted in pertinent part:

There is no evidence the Petitioner was diagnosed with a mental health condition during military service, although there is behavioral evidence of a possible alcohol

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use disorder that may have existed prior to military service and may have continued during military service. Problematic alcohol use is incompatible with military readiness and discipline. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Unfortunately, he has provided no medical evidence of a mental health condition to support his claims. His personal statement is not sufficiently detailed to establish clinical symptoms or 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 Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. 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).

The Board felt that Petitioner was struggling with alcoholism, which led to his significant periods of UA. The Board relied heavily on the character letter that discussed Petitioner's post-service sobriety and position within the community. While the Board agreed with the AO that there is no evidence that Petitioner was unaware of his misconduct or not responsible for his behavior, the Board felt that clemency was warranted in this case because Petitioner has turned his life around.

Notwithstanding the recommended corrective action directed below, the Board was not willing to grant an upgrade to an Honorable discharge or otherwise change the record. The Board determined that an Honorable discharge was appropriate only if the Sailor'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 code, and reentry code should remain unchanged based of their assessment that he was aware that he was committing misconduct at the time of his unauthorized absence and that he continues to be unsuitable for continued military service.

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RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 22 March 1974, 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.

