



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

█
Docket No: 4341-22

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 naval record be corrected to upgrade his characterization of service and to make other conforming changes to his 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, 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

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clemency determinations (Wilkie Memo). Additionally, the Board considered an advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's response to the AO.

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 limitation was waived in accordance with the Kurta Memo.

c. The Petitioner originally enlisted in the Marine Corps and began a period of active service on 26 June 1981. Petitioner's pre-enlistment physical examination, on 27 September 1980, and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms.

d. On 24 May 1983, Petitioner received non-judicial punishment (NJP) for the wrongful destruction of civilian property, and drunk and disorderly conduct towards the [REDACTED] Military Police. Petitioner did not appeal his NJP.

e. On 15 August 1983, the suspended portion of the May 1983 NJP was vacated and enforced due to Petitioner's continued misconduct. On 15 August 1983, Petitioner received NJP for drunk and disorderly conduct towards the Japanese [REDACTED] Police again. Petitioner did not appeal his NJP. On 30 August 1983, Petitioner's command issued him a "Page 11" counseling warning (6105) documenting both NJPs. The 6105 expressly warned Petitioner that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

f. On 26 September 1983, Petitioner was convicted at a Summary Court-Martial (SCM) of resisting arrest, and four separate specifications of insubordinate conduct. Petitioner was sentenced to forfeitures of pay and confinement for one month. On 27 September 1983, the Convening Authority approved the SCM sentence.

g. Following his SCM, Petitioner's command notified him that he was being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. Ultimately, on 28 October 1983, Petitioner was administratively discharged from the Navy for misconduct with an Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

h. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's original contentions and the available records and issued an AO on 7 November 2022. The Ph.D. stated in pertinent part:

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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, available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. 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 symptoms of PTSD."

i. In response to the AO, Petitioner submitted a personal statement providing additional information regarding the circumstances of his case.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, the Board noted the date of birth, as reflected on Petitioner's DD Form 214, is incorrect. Thus, the Board concluded that an administrative correction to Petitioner's DD Form 214 should be made.

Notwithstanding the corrective action taken to correct Petitioner's date of birth, the Board determined his characterization of service remains appropriate.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, his desire for a discharge upgrade and contentions that: (a) while stationed in [REDACTED] there was a plane crash Petitioner witnessed and he assisted with rescue and recovery efforts, (b) due to the horrific sights, sounds, and smells of that night Petitioner suffered terrible nightmares reliving such events for the past forty years, (c) Petitioner was not offered any type of mental health services following the crash, (d) Petitioner contended it was frowned upon to bring up such issues when he was enlisted, (e) Petitioner began to self-medicate with alcohol resulting in disciplinary action, and (f) Petitioner believed the Board needs to take into consideration how mental health was looked at forty years ago and the shame associated with it. For purposes of clemency and equity consideration, the Board noted Petitioner provided supporting documentation describing post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence Petitioner suffered from any type of mental health condition while on active duty, or that any such mental health

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conditions or symptoms were related to or mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board observed that Petitioner did not submit any clinical documentation or treatment records to support his mental health claims. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. The Board also determined 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. The Board did not find a material error or injustice with the Petitioner's OTH characterization of service and was not willing to grant an upgrade. The Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a general or honorable characterization of service. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board determined that characterization under OTH conditions is 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 noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, 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. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even after applying the liberal consideration standard for mental health conditions, the Board concluded that Petitioner's misconduct clearly merited his receipt of an OTH. While the Board also carefully considered any matters submitted regarding Petitioner's character, post-service conduct, and personal/professional accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief.

RECOMMENDATION:

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 28 October 1983, to reflect the following corrected date of birth in Block 5: "[REDACTED]."

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Following the correction to the DD-214 for the period ending 28 October 1983, that all other information currently listed on such DD-214 remain the same.

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.

1/11/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]