



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: 4577-22

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) 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) USD Memo of 25 Aug 17 (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 19 Aug 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 for an upgrade of his characterization of service.

2. The Board, consisting of ■■■■■, reviewed Petitioner's allegations of error and injustice on 21 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 16 August 1999.

d. In December 2001, Petitioner was diagnosed with adjustment disorder and long standing character and behavioral disorder.

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e. On 15 March 2002, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) totaling four days and false official statement.

f. On 17 March 2002, Petitioner commenced a period of UA, that subsequently concluded on 3 November 2003, totaling 596 days.

g. Upon his return to military custody, Petitioner presented himself for a psychiatric evaluation. On 17 December 2003, Petitioner was diagnosed with dysthymic disorder and borderline personality disorder. Additionally, Petitioner recommended for administrative discharge from the Marine Corps.

h. On 12 January 2004, Petitioner notified that he was being recommended for administrative discharge from the Marine Corps by reason of convenience of the government as evidenced by his diagnosed personality disorder. Petitioner advised of, and waived his procedural right to consult with military counsel and to present his case before an administrative discharge board.

i. Petitioner's commanding officer (CO) then forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Marine Corps with a General (Under Honorable Conditions) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's General (Under Honorable Conditions) character of service discharge from the Marine Corps. On 17 March 2004, Petitioner was discharged from the Marine Corps with a General (Under Honorable Conditions) characterization of service by reason of personality disorder.

j. On 4 April 2008, the Naval Discharge Review Board (NDRB) reviewed Petitioner's request for an upgrade of his discharge characterization and determined his discharge was properly issued.

k. Petitioner contends that when he was discharged he was in a "coma in a hospital in [REDACTED] Petitioner further states the Department of Veterans Affairs (VA) has rated him 100 percent service connected for a disability condition.

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:

During military service, the Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His personality and depressive disorder diagnoses were based on observed performance during his period of service, the information he chose to disclose, and the psychological evaluation performed during close observation in psychiatric hospitalization. During military service, it was determined that his personality disorder was the primary mental health concern. A personality disorder indicates lifelong characterological traits that are unsuitable for military service. There is no evidence of error in this determination. The Petitioner has

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provided no post-service medical evidence in support of his claims of other mental health conditions. Unfortunately, his personal statement and available service records are not sufficiently detailed to establish a nexus with his misconduct, given the extended UA. It is also difficult to attribute his false official statements to a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

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 evidence of other mental health conditions (Adjustment Disorder and Dysthymic Disorder) that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

m. In response to enclosure (3), you provided a statement providing additional information regarding the circumstances of your case including your inability to access medical files due to your incarcerated status.

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. Although not specifically requested by the Petitioner, the Board determined that Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a Secretarial Authority discharge in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

Regarding Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, his desire for a discharge upgrade and the contentions previously discussed. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined Petitioner's misconduct, as evidenced by his NJP and long-term UA, outweighed these mitigating factors. 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. Additionally, while the Board concurred with the AO and determined that there is evidence of other mental health conditions (Adjustment Disorder and Dysthymic Disorder) that may be attributed to military service, there is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition. As pointed out in the AO, Petitioner's personal statement and available service records are not sufficiently detailed to establish a nexus with his misconduct, given the extended UA. The Board further determined

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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. In fact, the Board felt that Petitioner already received a large measure of clemency and was fortunate to have received a General (Under Honorable Conditions) characterization in light of his long-term UA; an offense that typically is adjudicated at a court-martial and results in a punitive discharge. Thus, the Board concluded by opining that significant negative aspects of Petitioner's active service outweighed the positive aspects, even under the liberal consideration standards for mental health conditions, and continues to warrant General (Under Honorable Conditions) 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.

Similarly, notwithstanding the corrections recommended below, the Board concluded Petitioner's reentry code should remain unchanged based on his unsuitability for further military service due to his existing mental health condition.

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 214 reflecting that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF1," and the separation authority was "MARCORSEPMAN PAR. 6214."

That no further correction action be taken on Petitioner's naval 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.

10/6/2022

[REDACTED]