



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

█  
Docket No: 4947-22  
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) 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 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 14 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also 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 enlisted in the Marine Corps and began a period of active service on 29 July 1971. On 28 June 1972, Petitioner received non-judicial punishment (NJP) for disorderly

conduct. Petitioner did not appeal his NJP. On 2 August 1972 Petitioner received NJP for failing to obey a lawful order. Petitioner did not appeal his NJP.

d. Petitioner received NJP, on 8 August 1972, for unauthorized absence (UA). Petitioner did not appeal his NJP. Petitioner received NJP, on 6 September 1972, for UA, insubordinate conduct, and failing to obey a lawful order. Petitioner did not appeal his NJP. Petitioner received NJP, on 4 November 1972, for UA. Petitioner appealed the NJP but his appeal was denied by higher authority on 22 November 1972.

e. On 13 December 1972, Petitioner was convicted at a Summary Court-Martial of UA, disrespect toward a superior commissioned officer, and disobedience of a lawful order. Petitioner was sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), and confinement for thirty (30) days.

f. On 30 January 1973, Petitioner's command notified him that he was being processed for an administrative discharge by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. Petitioner consulted with counsel and elected his right to request an administrative separation board (Adsep Board).

g. On 16 February 1973, an Adsep Board convened to hear Petitioner's case. At the Adsep Board, Petitioner was represented by a Marine Corps Judge Advocate. The Petitioner testified under oath at the Adsep Board on his own behalf, but during his testimony Petitioner did not allege any discrimination or maltreatment. 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 a "General (Under Honorable Conditions)" (GEN) characterization of service. On 10 March 1973, the Separation Authority approved and directed Petitioner's GEN discharge.

h. Subsequently, on 30 March 1973, the Separation Authority revoked his approval for a GEN discharge due to the Petitioner committing additional serious offenses. The Separation Authority withdrew his approval so that appropriate disciplinary action could be taken.

i. On 12 April 1973, Petitioner submitted a voluntary written request for an undesirable administrative discharge for the good of the service in lieu of trial by court-martial for the following twelve (12) offenses: (i) two separate specifications of disrespect towards a superior commissioned officer; (ii) willful disobedience of a superior commissioned officer; (iii) two separate specifications of assaulting a Sergeant (E-5), (iv) two separate specifications of insubordinate conduct, (v) assaulting a Military Policeman in the execution of his duties; and (vi) four separate specifications of communicating a threat. As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Petitioner expressly understood if his request was approved, the characterization of service would be an undesirable (Other Than Honorable) (OTH) discharge. Petitioner acknowledged that with an OTH discharge he would be deprived of virtually all rights as a veteran under both federal and state legislation, and that he may encounter substantial prejudice

in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge therein may have a bearing.

j. In the interim, on 13 April 1973, Petitioner received NJP for failing to obey a lawful order. Petitioner did not appeal his NJP. On 2 May 1973 Petitioner received NJP twice for offenses that included two separate specifications of UA, insubordinate conduct, and breaking restriction. Petitioner did not appeal either NJP.

k. Ultimately, on 8 May 1973, Petitioner was administratively discharged from the Marine Corps in lieu of a trial by court-martial with an undesirable OTH characterization of service and assigned an RE-4 reentry code.

l. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 3.063 in conduct as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

m. In his application, Petitioner contended that he was suffering from mental health-related conditions from being consistently harassed, humiliated and discriminated against – always to the detriment of his legal standing. Petitioner argued, in part, that he served his country honorably during a time of war, and put his life at risk in order to serve the country that gave his family an opportunity. Petitioner further contended he gave an honest and diligent effort at completing his contract honorably, but his genuine efforts were not reciprocated. Petitioner proffered that he was the victim of racial discrimination by his fellow Marines and his command, and, that when this led to legal trouble, he was not provided competent or even fair legal advice.

n. 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 9 September 2022. The Ph.D. stated in pertinent part:

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, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, as his service record is inconsistent with the timeline presented in his statement. 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 that his misconduct could be attributed to a mental health condition."

o. In response to the AO, Petitioner provided rebuttal evidence. This led the Ph.D. to conclude that although there was post-service evidence of a mental health condition that may be

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

service-connected, there was still insufficient evidence that all of Petitioner's misconduct could be attributed to a mental health condition.

#### CONCLUSION:

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

In keeping with the letter and spirit of 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. Ultimately, the Board was not persuaded by Petitioner's arguments regarding his mental health, racial discrimination, or ineffective assistance of counsel. The Board noted that in Petitioner's administrative discharge request, he expressly stated in writing that he consulted with military counsel prior to submitting his request and that he was entirely satisfied with his advice. 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. Finally, the Board concluded that even if mental health conditions existed, the seriousness of his misconduct outweighed the mitigation offered by the existence of those mental health issues.

Despite the Board's finding that Petitioner's misconduct constituted a significant departure from the conduct expected of a Marine, the Board ultimately decided to grant relief as a matter of equity and clemency. The Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to GEN was appropriate at this time. Utilizing the same rationale, the Board also determined Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a Secretarial Authority separation.

Notwithstanding the recommended corrective action 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. 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 believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge and no higher was appropriate given his cumulative misconduct that was highly prejudicial to good order and discipline. In making this determination, the Board also observed Petitioner's overall active duty trait average in conduct (proper military behavior) during his enlistment did not meet the Marine Corps' required minimum trait average in that category for a fully Honorable characterization of service.

Lastly, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
XXX XX [REDACTED] USMC

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Directed by the Secretary of the Navy to Correct Official Records," the separation authority be changed to "MARCORSEPMAN par. 6012.1g," the separation code be changed to "JFF2," and the reentry code remain as "RE-4."

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.

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.

11/28/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]