



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

█  
Docket No: 5298-22

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 of 3 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/ enclosures  
(2) Advisory Opinion (AO) of 12 Sep 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 that his discharge under honorable conditions be upgraded to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 4 November 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 regulations within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Marine Corps with a waiver for his weight and began active duty on 30 May 1995. He served honorably and reenlisted three times: on 9 October 1998, 4 May 2001, and 26 June 2004. Approximately 20 months into his final enlistment, on 11 December 2005, he was administratively counseled for his assignment to weight control. He received a

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medical evaluation prior to his assignment to the Body Composition Program (BCP) which found no underlying cause or associated disease for his weight and body fat being over established standards. Meanwhile, his adverse fitness report (FITREP) for this period noted, in addition to his failure to maintain body composition standards, that he required direct daily supervision in order to be productive and that he simply did not exercise the initiative to overcome his deficiencies.

c. On 8 March 2006, during Petitioner's first 6 month assignment to BCP, he was relieved for cause due to his refusal to recruit.

d. A second medical evaluation during this period noted that Petitioner had made no progress during his assignment to BCP and, again, identified no underlying cause or associated disease. Accordingly, Petitioner was administratively counseled on 17 June 2006 for weight control failure.

e. Commanding Officer, Marine Corps Recruiting Station, [REDACTED] issued a written order to Petitioner on 20 October 2006 that he return to his appointed place of duty and execute recruiter duties. Petitioner signed an acknowledgment that his refusal to execute recruiter duties constituted disobeying of a written order; he also acknowledged his relief for cause, and a report of offense of Article 92 was forwarded for action.

f. Petitioner failed his second assignment to BCP on 18 December 2006; his final medical evaluation indicated that he had gained 46 pounds during his assignment to BCP. His adverse FITREP for this period documented that his performance was "well below the standard and expectations of a Marine SNCO," that he was able but unwilling to perform, and that he refused to operate without direct daily supervision. In a written statement, Petitioner asserted that he had successfully recruited for 22 months but that his son began having suicidal ideations in June of 2006 and that he had needed to be present for him. In forwarding Petitioner's relief for cause and referral to court-martial for the order violation, his CO noted that he had not previously mentioned the problems with his son. Petitioner was administratively counseled, on 12 March 2007, that any future service or reenlistment was recommended with reservation.

g. On 6 June 2007, without the protection of a pre-trial agreement, Petitioner plead guilty at Special Court-Martial (SPCM) to a violation of Article 90, failure to recruit, and was sentenced to a reduction to Sergeant/E-5 and received another adverse FITREP on the occasion of his reduction in grade. He was notified of separation proceedings for the reason of BCP failure, with a least favorable characterization of General (Under Honorable Conditions) (GEN), and elected to waive his hearing before an administrative board after consultation with counsel. Following approval of his separation by the CO, Marine Corps Recruiting District, Eastern Recruiting Region, Petitioner was discharged, on 28 September 2007, with a GEN characterization of service. His record of discharge did not document his period of continuous honorable service from his previous three periods of enlistment from 30 May 1995 through 25 June 2006.

h. Petitioner previously applied to the Naval Discharge Review Board under similar contentions which were considered on 3 March 2009. In addition to mitigating family

circumstances, he now contends to the Board that his separation for weight control failure while being assigned to recruiting duty should not reflect anything less than “Honorable” in light of his 12.5 years of service and states that it was known he was at his maximum weight prior to being accepted to recruiting duty. He also indicated that a mental health condition contributed to his discharge characterization and submitted post-discharge evidence of character to include a business license for pest control, a bachelor’s degree, and a letter from a currently serving Master Gunnery Sergeant assessing his character of service as “Honorable” and stating that the leadership at the recruiting station did not afford Petitioner time to maintain weight standards.

i. Because Petitioner contended a mental health condition, the Board also requested enclosure (2), the AO, for consideration. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. He has provided post-service medical evidence that is temporally remote to his military service, and attributes a mental health condition (depression with alcohol use disorder) to his military service, but provides no information regarding symptoms or impairment during military service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a nexus with his misconduct. Available records indicate problematic alcohol use prior to military service that may have continued during military service, and would contribute to weight control and depressed mood. While family and occupational stressors can contribute to mental health concerns, there was no evidence presented that indicated Petitioner’s experience of life stressors was extraordinary or unique or that Petitioner met the diagnostic criteria for a mental health condition during his military service. His report of the circumstances of his removal from recruiting to the VA provider is not consistent with his service record. Additional records (e.g., in-service or 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 AO concluded, “it is my considered clinical opinion there is post-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances of his separation could be attributed to a mental health condition.”

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants favorable action in the form of partial relief. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

The Board found that the failure to document Petitioner’s three previous periods of fully “Honorable” service constituted an error which necessitates correction. Accordingly, the Board determined that it is in the interest of justice to grant partial relief with respect to recording his “Honorable” periods of service.

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Notwithstanding the corrective action recommended below, the Board concluded the potentially mitigating factors presented by the Petitioner were insufficient to warrant relief. The Board concurred with the AO regarding the insufficient evidence that a mental health condition contributed to Petitioner's discharge. More significantly, the Board noted not only Petitioner's weight control failure but also his misconduct – to include an SPCM conviction for patently refusing to perform recruiter duties – and multiple adverse FITREPs which describe substantial problems with performance and conduct during his final period of enlistment well beyond that identified by his BCP failure. The Board noted that, even if Petitioner had been permitted to continue serving to the completion of his obligated active service in spite of his BCP failure, his SPCM conviction for the offense to which he admitted his guilt constitutes a significant negative aspect which outweighed the positive aspects during his final enlistment. Given these considerations, the Board concluded that Petitioner's service was not otherwise so meritorious that any characterization except "Honorable" would clearly be inappropriate. With respect to Petitioner's letter of support, the Board observed that it did not speak to his SPCM conviction which undoubtedly factored into his final characterization of service. As a result, 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.

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

RECOMMENDATION:

That Petitioner be issued a Correction to DD Form 214, Certification of Release of Discharge from Active Duty (DD Form 215) reflecting a comment in block 18 of "Continuous Honorable Service from 30 May 1995 to 25 June 2004."

That no further changes be made to Petitioner's record.

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 Regulation, 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.

11/18/2022

[REDACTED]  
Executive Director

Signed by: [REDACTED]