



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

[REDACTED]
Docket No. 5453-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

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 14 Nov 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 be upgraded either to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 January 2023, 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 and began a period of active duty on 21 October 1986. While attending training at the School of Infantry, on 22 March 1987, he was medically evacuated for emergency medical care after being assaulted by another Marine, to include being kicked in the head and losing consciousness for several minutes, with medically noted impact to

his immediate memory and cognition after the injury. Specifically, he could not recall the incident or identify correct details regarding his location or the date.

c. Approximately two weeks after his injury, Petitioner was referred for a psychiatric evaluation due to various symptoms, to include vertigo and numbness. Although he was found psychologically fit for duty, he was diagnosed as having a Personality Disorder (PD) with immature and dependent features, and he was medically recommended for discharge. A counseling entry, from 14 April 1987, references Petitioner's diagnosed PD addressed suicidal ideations and poor attitude. He was additionally counseled, on 23 April 1987, for an unauthorized absence (UA) and advised that further misconduct could result in separation.

d. On 30 April 1987, Petitioner was subject to nonjudicial punishment (NJP) for a violation of Article 86, UA, of the Uniform Code of Military Justice. His staff noncommissioned officer (SNCO) recommended his discharge in the best interests of the service, submitting a letter in which he described that Petitioner had been a problem since arriving for training, exhibited immature behavior, poor attitude, lack of motivation, behaved in a withdrawn manner, shunned authority, required a command directed psychiatric evaluation, and had been hospitalized for a head injury.

e. On 8 May 1987, Petitioner was notified of discharge proceedings for the convenience of the government with a least favorable characterization of service as General (Under Honorable Conditions) (GEN). He elected not to submit a statement in response. The recommendation for his separation specifically noted that the statement from his SNCO contained "specific non-medical examples of how [Petitioner was] unable to function in the Marine Corps."

f. Petitioner was discharged, on 21 May 1987, with final proficiency and conduct marks of 4.3 and 3.9 respectively. He was issued a DD Form 214 that lists his narrative reason for separation as "Condition not a disability personality disorder."

g. Petitioner subsequently enlisted in the Army National Guard (ARNG) in 1991 with a record of processing for enlistment in which he denied any previous military service. His enlistment physical, from 24 September 1991, denied any psychological or neurological issues. He served in the ARNG until his discharge, on 10 January 1994, for defective enlistment.

h. Petitioner contends he suffered a traumatic brain injury (TBI) due to an assault during his Marine Corps service. He describes the incident as: he was laying down and a Marine kicked him and hit him with a rifle butt repeatedly in the head, neck, and back until he lost consciousness, and the next thing he recalled was being on the helicopter for medical evacuation. He states he was hospitalized and suffered headaches, neck and back pain, and mental health issues of depression, anxiety, and anger. He asserts that he believed he would return to training after recovering; instead, he was medically recommended for discharge even though he wanted to continue serving. He states that he initially refused to sign the discharge papers until ordered to do so. He believes that his medical issues were poorly understood at the time of his discharge and asserts that his behavior which contributed to his characterization as General (Under Honorable Conditions) was misinterpreted as willful misconduct whereas he feels his TBI and

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

resulting post-traumatic stress disorder (PTSD) from the assault should mitigate his conduct. He submits evidence that he has since been awarded 100% disability by the VA for PTSD and TBI (as of 2016) but that he cannot obtain a “military ID card” because of his characterization of service.

i. Because Petitioner contends that he suffered both TBI and PTSD, the Board also requested enclosure (2), a combined medical and psychological AO, for consideration. The AO stated in pertinent part:

Petitioner was appropriately referred and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. While there is evidence of a head injury incurred the month prior to his evaluation, there is no evidence of error in personality diagnosis or long-term effects from the head injury, as he denied any symptoms upon entry into the ANG. Post-service, the VA has determined service connection for TBI and PTSD. However, there is insufficient evidence of error in diagnosis or that the circumstances surrounding his separation were not attributable to his personality disorder diagnosis.

The AO concluded, “it is my considered clinical opinion there is evidence of TBI that may be attributed to military service. There is post-service evidence of a diagnosis of PTSD. There is insufficient evidence the circumstances of his misconduct could be attributed to TBI, PTSD, or another mental health condition other than his in-service diagnosed personality disorder.”

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 with respect to the private health information disclosed in his record of discharge. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one’s discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner’s service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner’s discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board concluded his assigned characterization of service remains appropriate. The Board carefully considered Petitioner’s contentions that his TBI and diagnosis of PTSD merit consideration for upgrading his

Subj: REVIEW OF NAVAL [REDACTED]
[REDACTED]

characterization of service, however, the Board concurred with the AO as to the propriety of the PD diagnosis and resulting administrative discharge for convenience of the government. Notwithstanding that Petitioner's UA occurred subsequent to his injury, the Board found insufficient evidence to establish a nexus between his contended TBI and misconduct. Further, with respect to Petitioner's characterization of service, the Board specifically noted the detailed description his SNCO provided regarding the substandard nature of his behavior and conduct, which his SNCO specifically stated began at the outset of Petitioner's arrival for training at least a month prior to the head injury. Likewise, the Board observed in the recommendation for Petitioner's characterization as GEN, his commanding officer specifically relied on the non-medical examples of Petitioner's deficiencies. To the extent that the Board considered whether Petitioner's traumatic experience of a violent assault might have mitigated the misconduct which resulted in his GEN discharge from the Marine Corps, the Board concluded that his subsequent denial of any psychological or neurological medical problems at time of his defective entry into the ARNG forestalled such a determination. As a result, the Board found that the totality of favorable matters in support of mitigation were outweighed by the totality of Petitioner's behavior and conduct, which notably fell short of the 4.0 mark requisite for an "Honorable" characterization of service. Additionally, the Board found that his reentry code remains appropriate in light of his unsuitability for further military service. Accordingly, the Board determined that it is in the interest of justice to grant only partial relief with respect to expressed reason for Petitioner's discharge.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating, for the period ending 18 June 1987, that his discharge was issued under the authority of "MARCORSEPMAN par. 6214" for the narrative reason of "Secretary of the Navy Plenary Authority" with a separation code of "JFF1."

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

Subj: REVIEW OF NAVAL [REDACTED]
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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/23/2023

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Executive Director

[REDACTED]