



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

[REDACTED]
Docket No: 5498-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] 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 13 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 punitive discharge be upgraded and that his narrative reason for separation, separation code, and reentry code be changed. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], 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). In addition, the Board considered enclosure (2), an AO from a qualified mental health professional that was provided to the Petitioner for comment. Although Petitioner was provided an opportunity to comment on the AO, he chose not to do so.

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.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty on 16 October 1986. He served honorably and reenlisted on 6 January 1990. He served aboard the [REDACTED] during [REDACTED] from August of 1990 until April of 1991.

c. On 12 August 1991, Petitioner accepted nonjudicial punishment (NJP) for three specifications of violating Article 92 for disobeying local traffic regulations by driving his vehicle either under a state or base revocation. He received a second NJP, for the same offense, the following month, and a third NJP, in February of 1992, for a violation of Article 86 due to an unauthorized absence after failing to arrive at his appointed place of duty. At the time his Certificate of Discharge or Release from Active Duty (DD Form 214) was issued, it did not reflect his period of continuous honorable service from 16 October 1986 through 6 January 1990 in the block 18 Remarks.

d. On 8 May 1992, pursuant to a pre-trial agreement, Petitioner pled guilty before a General Courts-Martial to violations of: Article 121, larceny, for stealing from a Private First Class (PFC), a wallet of some value containing \$27, a phone card, a bank card, a driver's license, and a musician's license; Article 123, forgery, for falsely signing bank drafts under the PFC's name, with intent to defraud, for a total value of over \$3800 and at least one draft in excess of \$100; and, Article 134, for wrongful use an possession of the PFC's Armed Forces Identification Card. The adjudged sentence included a Bad Conduct Discharge (BCD), one year of confinement at hard labor, reduction to E-1, and forfeitures of pay. The conviction and sentence were affirmed upon appellate review and Petitioner's BCD was ordered executed. He was discharged, on 30 June 1995, with a BCD.

e. Petitioner contends he made a bad decision in his youth and was sentenced to 1 year of confinement, reduction to E-1, and forfeitures but that he was unaware of the other than honorable (punitive) discharge. He states that he served his sentence and learned from it, but that it should not define his entire character of service because he served in combat, had a prior Honorable discharge, and suffered from undiagnosed post-traumatic stress disorder (PTSD) from the Persian Gulf War, for which he currently receives treatment from the Department of Veterans Affairs (VA). In support of his contentions, he submitted records of his VA treatment for PTSD due to military trauma. For the purpose of clemency and equity consideration, he also submitted post-discharge evidence of character to include that he has been employed as a truck driver for 25 years, has been married for 20 years, and has 6 children; all of whom have earned college degrees except his youngest who is still in school.

f. Because Petitioner contends 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, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, he has received treatment for PTSD that has been attributed to military service. Unfortunately, his personal statement and available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given the nature of

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his misconduct. Additional records (e.g., complete post-service mental health records describing the Petitioner's mental health 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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 observed that, although Petitioner successfully completed his first enlistment, his period of continuous Honorable service, from 16 October 1986 through 6 January 1990, was omitted from his block 18 Remarks. Accordingly, the Board determined that it is in the interest of justice to grant the partial relief to correct the omission of his "Honorable" period of service.

Regarding Petitioner's request for relief, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his previously discussed contentions. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs and GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board, in considering the serious nature of the misconduct for which Petitioner was convicted at GCM, noted that it involved significant and premeditated financial harm to a junior enlisted Marine. Additionally, the Board concurred with the AO that there is insufficient evidence the misconduct which resulted in Petitioner's BCD may be attributable to his post-discharge diagnosis of PTSD. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. While the Board commends Petitioner's post-discharge 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 his characterization of service, changing his narrative reason for separation/separation code, reentry code, or granting the requested relief as a matter of clemency or equity.

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

RECOMMENDATION:

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty, (DD Form 215) indicating that his block 18 Remarks include a period of "Continuous Honorable

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service from 16 October 1986 through 6 January 1990.”

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]