



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

■
Docket No: 5542-22

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) 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 18 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 for an upgrade of his characterization of service, and to receive “disability,” a VA home loan, and GI Bill benefits.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 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 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 31 October 2000.

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

d. On 15 November 2001, Petitioner was issued an administrative remarks counseling concerning his failure to satisfactorily discharge his financial responsibilities as evidence by his 13 bounced checks.

e. On 19 December 2003, Petitioner received non-judicial punishment (NJP) for wrongful use of cocaine.

f. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. Petitioner was advised of, and exercised his procedural right to consult with military counsel and to submit a statement in rebuttal to his proposed separation; Petitioner waived his procedural right to present his case to an administrative discharge board (ADB).

g. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be retained in the Marine Corps and allowed to continue his enlistment. As part of his recommendation, the CO noted that Petitioner had been a valuable member of the command, provided excellent and honorable service, always performed above standard and had not presented any discipline problems. Ultimately, the SA directed Petitioner's administrative discharge from the Marine Corps with an Other Than Honorable (OTH) character of service. On 20 August 2004, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to drug abuse.

h. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and change to his narrative reason for separation. The NDRB denied Petitioner's request, on 7 February 2008, based on their determination that Petitioner's discharge was proper as issued.

i. Petitioner contend that he incurred PTSD and TBI during a combat deployment to Iraq, as well as a shoulder injury, which has required several surgeries to repair following his administrative discharge. Petitioner further contends the military fell short with helping veterans returning from deployment in coping with what they had been through and what they had to do to defend this country. Furthermore, Petitioner assert that he did not know how to deal with the civilian world after his deployment, which he felt led to his bad decision. He is still having problems coping with his injuries and deeply ashamed of what he did, and feel that if he had found the proper help during his service his outcome would have been different. He is not excusing his mistake, but requesting for reconsideration for the honorable time that he served, and the things that he accomplished while serving in the Marine Corps.

j. For purposes of clemency, the Board noted Petitioner provided advocacy letters, but no supporting documentation describing post-service accomplishments.

k. 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:

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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 diagnoses of PTSD and Anxiety from the VA that are temporally remote to his military service, and attributed to combat service. There is no available medical evidence to support his TBI claims. Unfortunately, his personal statements are inconsistent and not sufficiently detailed to establish a nexus with his misconduct. 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 insufficient evidence of TBI that may be attributed to military service. There is post-service evidence of diagnoses of PTSD and another mental health condition (anxiety) that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to TBI, PTSD, or another mental health condition."

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.

The Board found no error in Petitioner's OTH discharge for separation by reason of misconduct due to drug abuse. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, TBI, and MHC, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD, TBI, and MHC, and the effect that it may have had upon his misconduct. In this regard, the Board substantially concurred with the AO that there is post-service evidence of diagnoses of PTSD and another mental health condition (anxiety) that may be attributed to military service.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct in accordance with references (b) through (d), the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. Based upon this review, the Board found that Petitioner's MHC did have an effect on his misconduct and the mitigating circumstances of his mental health condition outweighed the misconduct for which Petitioner was discharged. In making this finding, the Board also weighed the CO's comments regarding Petitioner's positive performance during his enlistment. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record even under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

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

In regard to Petitioner's request to receive disability, home loan, and GI Bill benefits associated with the Department of Veterans Affairs (VA), whether or not Petitioner is eligible for benefits is a matter under the cognizance of the VA. Petitioner may contact his nearest VA office concerning his right to reapply for benefits or appeal the earlier unfavorable determination.

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 character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF1," the reentry code was "RE-1J," 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.

11/18/2022

[REDACTED]
Executive Director
[REDACTED]