



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

█
Docket No: 5649-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █
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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
(3) Subject's naval record (excerpts)
(4) Advisory Opinion

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his Other than Honorable (OTH) characterization of service be upgraded to Honorable and his narrative reason for separation be changed to Secretarial Authority in light of current guidelines as reflected in references (b) through (e). Enclosures (2) through (4) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 14 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). Additionally, The Board also considered the advisory opinion (AO) from a qualified mental health provider.

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, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

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c. Petitioner enlisted in the Marine Corps on 23 April 1990. His service records show that he served in Operation Desert Shield/Storm from December 1990 to March 1991. Petitioner was awarded the Combat Action Ribbon for this service. In May 1991, Petitioner served in Operation Sea Angel, a humanitarian response effort. He earned the Humanitarian Service Medal for this period of service.

d. Subsequent to these periods of deployment, Petitioner committed a series of misconduct. On 25 June 1991, petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 91 for failure to wear socks while on liberty. On 10 September 1992, Petitioner was found guilty at his second NJP for violation of UCMJ Article 86, a one-day period of unauthorized absence, and Article 92, for failure to obey an order. On 10 October 1992, Petitioner was found guilty at NJP of violating UCMJ Article 92 for falling asleep on fire watch. Finally, on 9 December 1992, Petitioner was found guilty at NJP of violating UCMJ Article 112(a) for wrongful use of marijuana.

e. On 6 January 1993, Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to drug abuse and pattern of misconduct. He consulted with qualified counsel and elected an administrative discharge board (ADB). Subsequently, on 28 January 1993, Petitioner waived his ADB. On 1 March 1993, Petitioner was discharged from the Marine Corps for misconduct – drug abuse, with an under other than honorable characterization of service and an RE-4B reentry code.

f. Petitioner contends that he was suffering from undiagnosed PTSD, with symptoms of stress and anxiety related to combat and the tragedies he witnessed while on deployment, which contributed to his misconduct. He provided post-service treatment records and documentation of diagnosed PTSD as mitigation evidence. As a result, an advisory opinion was requested from a mental health professional. Enclosure (4) states 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 provided evidence of a diagnosis of PTSD that has been attributed to military service. His misconduct does follow his military deployments and it is possible that disobedience, sleep disturbance, and marijuana use could be indicators of symptoms of undiagnosed PTSD.

Enclosure (4) concludes, “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 post-service evidence his misconduct could be attributed to PTSD.”

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner’s request warrants relief. While the Board noted Petitioner’s misconduct and does not condone his actions, it concluded that his PTSD sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board

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determined the mitigation evidence outweighed the severity of his misconduct. In making this finding, the Board substantially concurred with AO that there is evidence that Petitioner's misconduct may be attributed to PTSD. The Board highlighted the Petitioner's combat and deployment history while serving as part of Operation Desert Shield/Storm and Operation Sea Angel. The Board noted that the Petitioner's misconduct was subsequent to his deployments and consistent with the type of behavior that could be indicators of symptoms of undiagnosed PTSD. Accordingly, the Board concluded that a re-characterization of Petitioner's service to Honorable is appropriate and warranted in this case. Based on this finding, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should also be changed in the interests of justice.

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) that shows that on 1 March 1993, his characterization of service was "Honorable," narrative reason for separation was "Determination of Service Secretary – Secretary of the Navy Plenary Authority," separation code was "JFF1," and his separation authority was "MARCORPSEPMAN, par. 6214."

That Petitioner be issued an honorable discharge certificate.

That no further changes be made to the record.

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.

12/1/2022

[REDACTED]
Executive Director
[REDACTED]