



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

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Docket No: 5835-22

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) 10 U.S.C. § 1552

(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)

(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016

(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)

(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments

(2) Case summary

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 naval record be corrected to upgrade his characterization of service and make other conforming changes to his DD Form 214 following his discharge for a personality disorder.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 2 December 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, and applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory

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opinion (AO) furnished by qualified mental health provider. Although Petitioner was afforded an opportunity to submit an AO rebuttal, 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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active service on 24 May 2005. Petitioner's pre-enlistment physical, on 17 February 2005, and self-reported medical history noted no psychiatric or neurologic abnormalities, conditions, or symptoms.

d. On 30 January 2006, the Division Psychiatrist (DP) diagnosed Petitioner with a personality disorder, not otherwise specified with immature and borderline features. The DP strongly recommended that Petitioner be processed expeditiously for an administrative separation by reason of unsuitability. The DP determined that Petitioner's personality disorder existed prior to his enlistment, and that the Petitioner was responsible for his behavior and not mentally ill. On 31 January 2006, the Battalion Surgeon concurred with the DP's recommendation for an administrative separation for a medical condition not amounting to a disability.

e. On 6 March 2006, the Petitioner was notified that he was being processed for an administrative discharge for the convenience of the government based on his diagnosed personality disorder. The Petitioner waived his rights to consult with counsel and to provide a written rebuttal statement to the proposed separation. On 9 March 2006, the Petitioner's commanding officer (CO) recommended Petitioner's separation with an Honorable characterization of service. In making his recommendation, the CO noted that Petitioner had no misconduct in his service record. On 24 March 2006, a Marine Corps Staff Judge Advocate determined that Petitioner's separation was legally and factually sufficient. On 24 March 2006 the Separation Authority (SA) approved and directed Petitioner's discharge with a General (Under Honorable Conditions) (GEN) characterization of service. Ultimately, on 29 March 2006, the Petitioner was discharged from the Marine Corps with a GEN characterization of service with "Personality Disorder" as the listed narrative reason for separation and "JFX1" as the listed separation code. The Petitioner also received an "RE-4" reentry code.

f. The Marine Corps Separation and Retirement Manual (MARCORSEPMAN) paragraph 6203.3 states that the characterization of service for a personality disorder separation is Honorable, unless a GEN is warranted under the circumstances.

g. Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his brief enlistment was 4.15. Marine Corps regulations in place at the time

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of his discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service.

h. In short, Petitioner contended he had no documented misconduct in his record, and that because his behavior and performance were a direct result of his mental health conditions there was no justification for his characterization of service to be anything other than honorable. The Petitioner argued that it was an error and unjust to have characterized his service as GEN.

i. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 7 October 2022. The Ph.D. stated in pertinent part:

Medical records are not available in his electronic file for review. 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. He was appropriately diagnosed with a personality disorder given his observed symptoms of "emotional breakdowns, psychosomatic complaints, thoughts of suicide and poor motivation for treatment." Unfortunately his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records describing the Petitioner's in-service diagnosis, milieu interactions and symptoms would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his in-service diagnosed personality disorder could be attributed to a mental health condition."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board believed that there was an injustice in ultimately separating the Petitioner with a GEN characterization of service. The Board took notice that the governing MARCORSEPMAN provision stated Petitioner's characterization should be honorable under the circumstances, unless a GEN was warranted. The Board noted that there were no instances of adjudicated misconduct in Petitioner's service record and determined his diagnosed personality adversely affected his performance and was the underlying cause of his discharge. With that being determined, the Board concluded that no useful purpose was served by continuing to characterize the Petitioner's service as having been under GEN conditions. Especially in light of the Wilkie Memo, the Board concluded after reviewing the record holistically, and given the totality of the circumstances that a discharge upgrade is appropriate at this time.

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The Board also determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictated 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 were also warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code and was not willing to modify it. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that it was proper, equitable, and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "Honorable," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new Honorable Discharge Certificate.

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.

12/14/2022

[REDACTED]
Executive Director
[REDACTED]