



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

█
Docket No: 5877-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ XXX XX █ USMC

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 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
(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 in light of current guidelines as reflected in references (b) through (e). Enclosures (2) through (4) apply.

2. The Board reviewed Petitioner's allegations of error and injustice on 7 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, The Board also considered enclosure (4), an advisory opinion (AO) favorable to Petitioner, as well as the supporting documentation provided by the Petitioner.

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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, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Marine Corps on 23 April 2003. His service records show that he was assigned to [REDACTED] and participated in [REDACTED]. Petitioner was awarded the Combat Action Ribbon related to this service. Prior to deployment, Petitioner was being treated for Depression and prescribed Prozac, which was stopped by the Command half way through deployment. On 21 October 2004, as part of a Post-deployment Health Assessment (PDHA), Petitioner received a medical and psychological evaluation that indicated service-related PTSD symptoms, as well as major depression and substance abuse. On 29 October 2004, petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 128 for assaulting another Marine. On 19 November 2004, Petitioner received a Page 11 Administrative Remark notifying him that he was being processed for administrative separation based on misconduct, drug abuse, as evidenced by a positive drug test on 29 October 2004. From 23 November 2004 to 15 March 2005, Petitioner was absent without authorization from his unit due to civilian incarceration related to a civilian conviction for Driving Under the Influence. On 22 March 2005, Petitioner was served a Special Court Martial charge sheet for violations of UCMJ Article 112(a), drug abuse, and Article 86, unauthorized absence (UA). On 2 May 2005, Petitioner submitted a request for Separation in Lieu of Trial by Court Martial (SILT). Petitioner's SILT was approved and, on 5 August 2005, Petitioner was separated from the Marine Corps with an OTH characterization of service and an RE-4B reentry code.

d. Petitioner contends that he was suffering from PTSD and depression from OIF combat operations, which contributed to his misconduct. He provided in-service and post-service treatment records for PTSD as mitigation evidence. As a result, an advisory opinion was requested from a mental health professional. Enclosure (4) was issued and states in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His 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 [Mental Health Provider], MFT. Post-service he has also been diagnosed with PTSD, depression and substance abuse while in the Federal Healthcare Center in 2015. The Petitioner's behaviors that resulted in misconduct are consistent with a PTSD diagnosis.

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Enclosure (4) concludes, "it is my considered clinical opinion there is evidence of diagnosed PTSD that existed in service. There is evidence the circumstances of his separation could be attributed to PTSD and/or another mental health condition."

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 his PTSD condition sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board 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 noted Petitioner's substantial combat history while serving as part of OIF in [REDACTED] and the nature of his post-deployment misconduct. The Board also highlighted that the Petitioner was receiving mental health treatment even before deployment, to include medication for depression, and his Command chose to deploy the member to combat in spite of his condition. Accordingly, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as OTH and a re-characterization to an Honorable discharge is now more appropriate. Based on this finding, the Board also determined that Petitioner's narrative reason for separation and separation authority 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 5 August 2005, his characterization of service was "Honorable", narrative reason for separation was "Secretarial Authority," his SPD code was "JFF1," his separation authority was "MARCORSEP 6214," and his reentry code was "RE-1J."

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

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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.

11/17/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]