



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

[REDACTED]
Docket No. 5920-22

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 16 Feb 23
(3) Rebuttal to AO of 16 Feb 23

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 discharge be upgraded, that his narrative reason for separation be changed to reflect "Secretarial Authority," and that his reentry code be changed. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 March 2023, 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 enclosure (2), an advisory opinion (AO) at furnished by a qualified mental health provider, along with enclosure (3), Petitioner's response to the AO.

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.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty on 13 September 1988. He served without incident, to include deploying in support of Operation [REDACTED] [REDACTED] from 18 August – 26 November 1990.

c. Following redeployment, Petitioner absented himself without leave on 26 December 1990, returning upon his voluntary surrender on 31 December 1990. After administrative counseling for “frequent” involvement with military and civil authorities, Petitioner initially began level II outpatient alcohol treatment on 7 January 1991, but was dropped as a treatment failure. He subsequently accepted nonjudicial punishment (NJP), on 18 January 1991, for his violation of Article 86 due to his unauthorized absence (UA) and for Article 92 due to violating a base order by having alcohol in his Bachelor Enlisted Quarters room.

d. Petitioner was screened, on 28 February 1991, for alcohol use and found to be psychologically dependent on alcohol, with a recommendation for level III residential treatment.

e. On 14 June 1991, Petitioner accepted a second NJP for operating a motor vehicle while under the influence (DUI) of alcohol, and was later counseled for the months of June and July that he was not recommended for promotion due to failure to display requisite qualities of a noncommissioned officer.

f. Petitioner’s third NJP on 24 July 1991 was for related charges under Article 86 and 92 wherein he had willfully disobeyed the order of a Sergeant to retrieve his “no haircut” chit and then report back to the S-1 (administration office) by 0700.

g. On 18 October 1991, Petitioner was notified of processing for administrative separation under Other Than Honorable (OTH) conditions by reason of misconduct due to pattern of misconduct and commission of a serious offense, based on his disciplinary history of three NJPs and DUI. The legal review conducted, on 29 October 1991, clarified that the DUI offense was in addition to his earlier NJP and had occurred after Petitioner was involved in a motor vehicle accident resulting in injuries for which he was subject to civilian charges. Petitioner’s separation was approved and, following a brief medical hold due to his injuries, he was discharged on 30 December 1991 with an OTH. His final proficiency and conduct marks were 4.1 and 4.0, respectively.

h. On 12 December 2008, the Board denied Petitioner’s request for relief in Docket No. 2414-08, wherein he contended that he was unfit for duty due to physical disability and should have been discharged for that reason.

i. With respect to his characterization of service, Petitioner now contends through counsel that his physical condition of keloid scars on his neck pre-dated his military service but was significantly aggravated during his military service after a barber cut over his scars, causing them to bleed, discharge pus, and emit odor. He states that his condition not only interfered with his ability to maintain proper haircuts but resulted in significant bullying and ridicule from other, predominantly white, service members who would comment about his appearance or the smell associated with his condition. He relates that he began to feel both emotionally and physically

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isolated as a result of his treatment by fellow Marines and that his condition worsened during his deployment to ██████████, because the sand would get under his helmet and flack jacket then rub against his neck. He states that, although he received corrective surgery while deployed in theater, it failed to fully remediate the problem, aggravating his follicles, causing further pain and problems with pus. After returning from deployment, when his peers continued to ridicule him, he began self-medicating both his depression and physical discomfort with alcohol use and quickly became alcohol dependent. He was also afraid to receive further haircuts due to the issues he had previously experienced, which resulted in the disciplinary problems he encountered relating to his “no haircut” chit because his (again, predominantly white) superiors were not sensitive to the health problems associated with his condition. Finally, Petitioner asserts that he clearly needed level III outpatient rehabilitation due to the severity of his alcohol dependence, which had been diagnosed and acknowledged during screening, but was not afforded appropriate treatment for that condition or other mental health care, in spite of requesting it, which might have avoided the final DUI misconduct that resulted in his administrative discharge.

j. In addition to his contentions of injustice, Petitioner submits evidence of post-discharge character for consideration of clemency, to include having achieved and maintained sobriety for nearly a decade, having sought regular mental health care for the past two decades, and investing in his own education and betterment, in spite of suffering from end-stage renal failure since 2008. He believes that he has shown deep remorse and made significant improvements in his life in comparison to the circumstances of his discharge and submits evidence of his service health records, post-service civilian medical records, disability determinations and progress notes from the Department of Veterans Affairs (VA), transcripts, commendatory news articles, four character letters, and a letter from a chief warrant officer during his deployment acknowledging the impact of his health condition during his deployment.

k. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration, which is considered favorable to Petitioner’s contentions. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His in-service alcohol use disorder 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 the mental health clinician. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior conducted following alcohol consumption. Post-service, the VA has granted service connection for a mental health condition (depressive disorder) that is temporally remote to military service. While unrecognized symptoms of depression may have contributed to disobedience and increased alcohol consumption, the Petitioner remains responsible to refrain from driving while intoxicated. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

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The AO concluded, "it is my clinical opinion there is post-service evidence of a mental health condition that the VA has attributed to military service. There is post-service evidence some of his misconduct may be attributed to a mental health condition."

1. Petitioner submitted a rebuttal to the AO, in which counsel reiterated the supporting opinion of the AO and provided supplemental documentation in support of post-discharge character.

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 reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; additionally, the Board observed that the AO did not find that Petitioner's DUI offenses were mitigated by his mental health conditions. However, the Board concurred with the AO to the extent that it found Petitioner suffered a mental health condition during his military service which mitigated a significant portion of his in-service misconduct. Additionally, the Board favorably considered his evidence of post-discharge rehabilitation and character, to include his continued sobriety in overcoming the alcohol dependence which was the underlying source of most of his misconduct. The Board also considered clemency factors in relation to the severity of the health condition he suffered during his military service, the fact that he was recommended for level III rehabilitation treatment, which he did not appear to receive even after having failed level II and after being diagnosed alcohol dependent, and his current medical condition with respect to end-stage renal failure. As a result, the Board found that the totality of favorable matters in support of relief outweighed the misconduct which resulted in Petitioner's discharge under OTH conditions. Accordingly, the Board determined that it is in the interest of justice to grant relief by upgrading his characterization of service to General (Under Honorable Conditions) along with a change to his narrative reason for separation to Secretarial Authority.

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 member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Additionally, the Board concluded that Petitioner's reentry code remains appropriate in light of his record of misconduct and unsuitability for future military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the corrective action recommended.

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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) indicating that, on 30 December 1991, he was discharged with a "General (Under Honorable Conditions)," under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1."

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.

4/11/2023

[REDACTED]

Executive Director

[REDACTED]