



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: 6182-22

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

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 change his narrative reason for separation following his involuntary discharge for a personality disorder.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 5 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

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clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider and 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.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the United States Marine Corps and began a period of active service on 6 July 1992. Petitioner's pre-enlistment physical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. On 30 December 1992, Petitioner received an Administrative Counseling (Page 11) addressing the deficiencies in his performance and conduct, reprimanding him for unauthorized absence (UA) from a Battalion phone watch. It was noted that "SNM shows poor judgment, lack of responsibility and failure to follow orders and regulations." Petitioner was advised that further deficiencies may result in disciplinary action or administrative separation.

e. On 8 October 1993, Petitioner received his second Administrative Counseling (Page 11) addressing the deficiencies in his performance and conduct, reprimanding him for uniform deficiencies. Petitioner was advised that further deficiencies may result in disciplinary action or administrative separation.

f. On 23 February 1994, Petitioner received non-judicial punishment (NJP) for a one day period of unauthorized absence. Petitioner received forfeitures of pay and 14 days of restriction and extra duties. Petitioner did not appeal his NJP.

g. On 22 December 1994, Petitioner received an Administrative Counseling (Page 11) addressing the deficiencies in his performance and conduct, for "lack of judgment, failure to keep your chain of command informed and your selfishness."

h. In March 1995, Petitioner was hospitalized for a suicide attempt via overdose of an over-the-counter drug. He was subsequently seen by a psychiatrist, who noted a significant history of mental health issues, to include pre-service mental health therapy. The Petitioner was later diagnosed with an Adjustment Disorder with Depressed Mood and Personality Disorder NOS (not otherwise specified).

i. On 5 December 1995, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to "long standing personality disorder." Petitioner waived his rights to consult with counsel and submit a statement on his own behalf. On 28 February 1996, Petitioner was discharged from the Marine Corps with a GEN discharge and assigned an RE-3C reentry code. The Board specifically noted on Petitioner's DD Form 214 that

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the narrative reason for separation was “Convenience of the Government, Condition not a Physical Disability, Personality Disorder” with a separation code of “HFX1.”

j. Petitioner contends that his service generally met the acceptable standard of military service and he therefore deserves an Honorable discharge. He provides medical evidence of service-connected PTSD and other mental health conditions. He argues that in light of these diagnoses, a General (Under Honorable Conditions) (GEN) discharge would be contrary to current policy guidance.

k. As part of the Board’s review process, a qualified mental health professional reviewed Petitioner’s contentions and the available records and issued an AO dated 20 October 2022. The AO noted in pertinent part:

The Petitioner submitted evidence from VA Disability Rating whereby he was found to be service-connected for Major Depressive Disorder with Anxious Distress (2013), and a psychological evaluation performed by [REDACTED], PsyD in 2015. The psychological evaluation carries a diagnosis of PTSD due to a number of reported traumas as verbalized by the Petitioner. He was also diagnosed with Major Depressive Disorder Recurrent without Psychotic Features. There is evidence that the Petitioner was diagnosed with an Adjustment Disorder and Personality Disorder in service. He exhibited behaviors consistent with a Personality Disorder as evidenced by his frequent suicidal gestures, impulsivity, unstable personal relationships and affective instability which dated to pre-service. There is no evidence contained within the Petitioner’s service record that any of the traumatic events that he told [REDACTED] occurred, nor did he mention any other stressors/rationale for his behaviors other than his volatile marriage throughout any interactions with mental health staff or during his separation processing.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

l. Petitioner provided a response to the AO explaining the nexus between his mental health conditions and the underlying performance issues. He also highlights that his performance issues were minor in nature, which is why mental health was the basis for separation rather than misconduct.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants partial relief. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board 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 dictate a change. Accordingly, the Board concluded that

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Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

With regard to Petitioner's request that his discharge characterization be upgraded, in light of references (b) through (e) and after reviewing the record holistically, the Board concluded that Petitioner's discharge characterization should be upgraded to Honorable. The Board concurred with the Petitioner's assessment that his service generally met the acceptable standards expected during service and that his minor performance problems would not rise to the level of warranting a GEN discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a change to the reenlistment code. The Board gave liberal and special consideration to Petitioner's record of service, however, in light of the Petitioner's diagnosed PTSD and other mental health conditions, the issued RE-3C reentry code remains proper in this case.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 28 February 1996, his characterization of service was "Honorable", narrative reason for separation was "Secretarial Plenary Authority," separation code was "JFF1," and his separation authority was "MARCORPSEPMAN, Par 6012".

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.

12/15/2022

