



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

█  
Docket No: 6266-22

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 PTSD," of 3 September 2014  
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (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  
(e) USD 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

Encl: (1) DD Form 149  
(2) Case summary  
(3) Advisory Opinion of 20 October 2022

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 his record be corrected to upgrade the character of his service to General (Under Honorable Conditions) or Honorable. Enclosures (1) through (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 19 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, and references (b) through (e), which 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 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by

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Veterans claiming PTSD or traumatic brain injury (TBI), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (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 considered enclosure (3), the 20 October 2022 Advisory Opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on the AO, 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 the enclosure 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 and began a period of active duty on 5 February 1990.

d. On 26 December 1990, Petitioner received nonjudicial punishment (NJP) for sleeping while posted as a sentinel. On 2 July 1991, Petitioner received a second NJP for two instances of unauthorized absence (UA) from appointed place of duty, and disobeying a lawful order from a noncommissioned officer. On the same date, Petitioner was counseled for his previous NJP violations. Petitioner was advised that failure to take corrective action could result in administrative separation. On 4 September 1991, Petitioner began a period of UA which lasted three days. On 18 September 1991, Petitioner was counseled for UA, disobedience of orders, and sleeping on post. Petitioner was advised that failure to take corrective action could result in administrative separation. On 19 September 1991, Petitioner received a third NJP for a period of UA. A portion of his NJP was suspended contingent on his good conduct. On 1 November 1991, Petitioner received a fourth NJP for breaking restrictions. As a result, on 5 November 1991, the Petitioner's commanding officer recommended that he be administratively separated from the Marine Corps with an Other Than Honorable (OTH) by reason of misconduct due to pattern of misconduct. On 27 November 1991, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, he decided to waive his procedural rights. On 13 March 1992, the Petitioner's previously suspended NJP punishment was vacated. On 18 March 1992, Petitioner received a fifth NJP for violation to MCO orders by wearing an earring while on post, and wrongfully appropriated telephone services by using a calling card number without authorization. On 24 March 1992, Petitioner's administrative proceedings were determined to be sufficient in law and fact. On 27 March 1992, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to minor disciplinary offenses. On 10 April 1992, Petitioner was discharged. On 10 June 2016, this Board denied Petitioner's request for a discharge characterization upgrade.

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e. Petitioner contends he was suffering from undiagnosed Post Traumatic Stress Disorder (PTSD) and claim that was the reason for his misconduct. Petitioner was recently diagnosed with PTSD and granted service connected disability from the Department of Veterans Affairs (VA). Petitioner also argues that the VA considered his period of service as Honorable, which does not bar him from receiving benefits.

f. In light of the Petitioner's assertion of PTSD, the Board requested enclosure (3). The AO stated in pertinent part:

There is no evidence that Petitioner 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 has provided evidence that he was diagnosed with PTSD and other mental health conditions post-service, however it is difficult to state that these diagnoses were present in service due to lack of evidence and temporal remoteness. Furthermore, the Petitioner exhibited misconduct prior to his deployment in support of [REDACTED]. Thus although his psychological evaluation indicates PTSD connected to his deployment, it cannot be said that all of his misconduct was due to PTSD or mental health conditions due to at least some of his disciplinary action taking place before his deployment.

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

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Because Petitioner based his claim for relief in whole or in part upon his PTSD condition, the Board reviewed his application in accordance with the guidance of references (b) through (d). Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD condition, and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO that there was sufficient evidence that Petitioner suffered from a mental health condition during his military service, and that some of Petitioner's misconduct may be mitigated by that condition.

After thorough review, the Board found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, and that therefore the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions). Further, the Board also recommends that Petitioner's narrative reason for separation be changed to secretarial authority to minimize the likelihood of negative inferences being drawn from his naval service in the future.

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 Marine's service was otherwise so meritorious that any other

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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. Similarly, the Board determined Petitioner's reentry code remains appropriate in light of his history of misconduct. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the correction action recommended below.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new DD Form 214 indicating a "General (Under Honorable Conditions)" character of service, "Secretarial Authority" narrative reason for separation, "JFF1" separation code, and "MARCORSEPMAN, par. 6210.2" separation authority.

That no further changes be made to Petitioner's 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/13/2023

