



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

█
Docket No. 6292-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) Official Military Personnel File
(c) USD Memo of 25 Aug 17 (Kurta Memo)

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion (AO)

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), seeking reconsideration of his request that he be placed on the disability retirement list for undiagnosed post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) and that his Certificate of Release or Discharge from Active Duty (DD Form 214) be "amended to remove the improper diagnosis of personality disorder."

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 7 December 2023, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of Petitioner's application, enclosure (1), together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies to included reference (c). The Board also considered the enclosure (2), the 29 November 2023 AO from a qualified medical professional.

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. Although Petitioner's application was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. A review of Petitioner's reference (b) Official Military Personnel File (OMPF) reveals that Petitioner enlisted in the Marine Corps and served a period of Honorable active service from 19 July 1979 until his completion of his required service on 2 June 1982. During this first enlistment in the Marine Corps, Petitioner received nonjudicial punishment on three occasions

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for dereliction of duty, unauthorized absence, and for being drunk on duty. After a nearly six-month break, Petitioner reenlisted in the Marine Corps on 29 November 1982 and served until 28 January 1985, when he immediately reenlisted on 29 January 1985. According to the AO, on 17 August 1983, Petitioner was admitted to [REDACTED] Emergency Department after he was a

passenger on motorcycle and involved in accident during which ‘he fell without helmet on.’ The medical record stated Petitioner experienced a significant period of loss of consciousness and lethargy. In ER he was arousable and noted to be alert and oriented x 3 in no apparent distress. Physical examination noted to be “WNL” (within normal limits) including neurological exam. He was admitted to ward 6 North for observation. In a 6/1/2021 statement, Petitioner attested he was hospitalized for two days and still has no memory of the accident.

c. On 1 July 1985, Petitioner received nonjudicial punishment for disobeying a general order and being drunk and disorderly. On 18 August 1987, Petitioner received nonjudicial punishment for disrespect to a superior commissioned officer. On 27 January 1989, a medical officer diagnosed Petitioner with a personality disorder and recommended that he be discharged expeditiously. On 31 March 1989, Petitioner was discharged due to condition not a disability – personality disorder and assigned an Honorable characterization of service.

d. Petitioner filed a petition with this Board in 2018 seeking similar relief, which this Board denied by letter dated 8 April 2020. According to its prior decision, this Board explained that it determined that there was “insufficient evidence you were unfit for continued naval service due to PTSD or TBI.” In reaching its decision, the Board explained that it:

relied on the fact the VA [U.S. Department of Veterans’ Affairs] has not granted you a service connection for either disability condition. Further, the Board was not persuaded by your argument that your misconduct was somehow related to PTSD and TBI since your medical record establishes a pattern of misconduct that commenced well before your entry into the Marine Corps.

Based on your preservice history, the Board concluded that the preponderance of the evidence supports your personality disorder diagnosis in 1989. Based on that finding and the lack of evidence supporting unfitness, the Board found the evidence supports your discharge for convenience of the government due to your personality disorder. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

e. Approximately two years after this Board’s decision denying Petitioner’s request based in part on the fact that the VA had not granted him a service connected disability rating for either PTSD or TBI, on 8 March 2022, the Department of Veterans’ Affairs (VA) issued a finding that awarded Petitioner service connected disabilities for TBI and Migraines, which was ultimately rated at 100%.

f. Petitioner requested reconsideration of his request that he be placed on the disability retirement list for undiagnosed PTSD and TBI and that his DD Form 214 be “amended to remove the improper diagnosis of personality disorder.” In support of his request for reconsideration, Petitioner provided new and material evidence to rebut this Board’s prior finding that he had a pre-service history of alcohol abuse and antisocial behavior. These included VA findings as noted above, letters from medical and/or mental health professionals attesting that Petitioner has been assessed and has been determined to suffer from TBI, PTSD, Major Depressive Disorder, and Alcohol Use Disorder, severe, in remission, and the results of mental health testing.

g. In order to assist it in reaching a decision, the Board obtained the enclosure (2). The AO was considered favorable to the Petitioner, finding as follows:

Since the previous BCNR decision, Petitioner and counsel have presented new and material evidence in support of the application that rebuts the final 2020 BCNR finding of lack of evidence of error or injustice to warrant change to the record due to: 1) the preponderance of evidence supported the 1989 personality disorder diagnosis and recommendations for administrative separation; 2) the misconduct was not related to PTSD and TBI as the medical record established a pattern of misconduct commended well before entry into the Marine Corps; 3) the VA did not grant service-connection for either disability condition; and 4) there was insufficient evidence of unfitness due to PTSD or TBI.

New clinical evidence, personal statements, statements from family, friends, and acquaintances effectively refute required diagnostic criteria necessary for the diagnosis of Personality Disorder with Antisocial and Avoidant Features rendered in the 1989 Psychiatric Evaluation that formed the basis for Petitioner’s discharge.

* * *

The BCNR contention that ‘the VA did not grant service-connection for either disability condition’ constituted evidence that did not support Petitioner’s prior petition was negated by the 3/7/2022 VA Rating Decision that granted service connection for traumatic brain injury (70% disability evaluation) and Migraines secondary to TBI (10% disability evaluation) effective November 1, 2021.

Additionally, multiple VA Disability Evaluations and post discharge clinical evaluations and treatment records provided a diagnosis of PTSD with the events in [REDACTED] and after informing his command of drug use and selling by his unit members consistently cited as the most prominent traumatic events triggering the development of his PTSD. In-service records and his personal testimony together describe a range of mental health symptoms consistent with PTSD occurring during his military service.

Regarding the prior BCNR contention there was ‘insufficient evidence of unfitness due to PTSD or TBI’ was refuted by the new evidence and testimony that Petitioner

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experienced significant symptoms during his military service from traumatic events that occurred during his service (TBI from 1983 motorcycle accident and PTSD from stressor events during his first and second periods of enlistment) that resulted in occupational and social impairments rendering him unable to fully conform to the requirements of Marine Corps service.

* * *

After review of all available and provided clinical evidence, in my medical opinion, the preponderance of evidence supports Petitioner's contention the in-service personality disorder diagnosis was not supported by his personal and clinical history, that he experienced psychological symptoms indicative of mental health conditions in-service to include PTSD, TBI, and Alcohol Use Disorder, and that these mental health conditions prevented him from reasonably performing the duties of his grade, rank, and military specialty.

It is likely the Personality Disorder diagnosis precluded further scrutiny for other possible mental health conditions, as it provided a tangible pathway to discharge the Petitioner. In reviewing the range of psychological symptoms documented in his in-service records, personal statements, and testimonials from those close to him during this period of military service and post-discharge mental health challenges, the level of occupational and social impairment experienced most closely approximates "Occupational and Social Impairment with Reduced Reliability and Productivity" corresponding to a VA Disability rating of 50%.

Should consideration of Petitioner's request for relief be granted, the recommended correction of the record would result in the following, applied to the time of discharge (31 March 1989):

Unfit for the following conditions with placement on the Permanent Disability Retired List (PDRL):

1. Traumatic Brain Injury (with PTSD and Alcohol Use Disorder), VA Code 9304, rated at 50%, permanent and stable, not combat related (NCR), non combat zone (NCZ).

This results in a combined rating of 50%.

h. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for consideration of Petitioner's contention that at the time of his discharge he was suffering from undiagnosed PTSD and TBI and should have been evaluated further for fitness for duty and medical retirement.

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CONCLUSION

Upon review and consideration of the new and material evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants relief. Specifically, the Board substantially concurred with the findings of the AO in concluding that Petitioner record should be changed to reflect his placement on the PDRL pursuant to the recommendation of the AO.

With respect to Petitioner's request to change to remove the "personality disorder" narrative reason for separation, this requested relief is subsumed into the relief provided, which includes changing this narrative reason for separation to disability – permanent.

RECOMMENDATION

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

Petitioner's naval record be corrected by being placement on the PDRL to the date of his discharge (31 March 1989) as being unfit for the following condition:

1. Traumatic Brain Injury (with PTSD and Alcohol Use Disorder), VA Code 9304, rated at 50%, permanent and stable, not combat related (NCR), non combat zone (NCZ).

This results in a combined rating of 50%.

The DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's placement on the PDRL and any lawful monies owed.

The Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) with changes as follows: narrative reason for separation: Disability, Permanent; separation program designator: as appropriate; reentry code: RE-3P.

And no other action.

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.

12/26/2023

