



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

[REDACTED]
Docket No: 6299-22
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]
[REDACTED] 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 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 from Other than Honorable (OTH) to Honorable (HON).

2. The Board, consisting of [REDACTED], and [REDACTED], 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, 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 an advisory opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to respond to 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 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 Marine Corps and began a period of active service on 18 September 2001.

d. From 31 October 2002 to 30 November 2002, Petitioner was in an unauthorized absence (UA) status. From 12 December 2002 to 6 January 2003, Petitioner was again in a UA status. On 18 February 2003, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for two the periods of UA totaling 56 days. Petitioner did not appeal his NJP.

e. Petitioner was deployed to [REDACTED] as a Field Artillery Cannoneer (MOS 0811) from February 2003 through May 2003.

f. On 25 August 2003, Petitioner began a significant period of UA, remaining absent from his unit until 26 April 2005, when he was returned to military control. He was declared a deserter, on 24 September 2003, and was UA for a total of 611 days.

g. On 3 May 2005, Petitioner was notified of administrative separation proceedings by reason of misconduct due to commission of a serious offense. Petitioner waived his right to consult with qualified counsel and his right to present his case at an administrative separation board.

h. Ultimately, on 24 May 2005, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reenlistment code.

i. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 3.0 in conduct and 3.8 in performance as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully Honorable characterization of service.

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j. In short, Petitioner contended that he was suffering from service-connected PTSD related to combat in Iraq and that the Marine Corps failed to properly diagnose and treat his PTSD. The Petitioner argued that PTSD was a causative factor for the behavior underlying his OTH discharge, and the Board must view his mental health conditions as mitigating factors to the misconduct and upgrade his characterization of service.

k. In connection with Petitioner's assertion that he incurred PTSD during military service, which might have mitigated the circumstances that led to his discharge character of service, the Board requested and reviewed an Advisory Opinion (AO) provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued an AO dated 1 November 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. He has provided post-service evidence of diagnosis and treatment for PTSD and other mental health conditions attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct, as he had two periods of UA prior to his deployment. Additionally, while his decision to UA after deployment could be attributed in part to PTSD avoidance symptoms, it is difficult to attribute his decision to remain UA for an extended period to PTSD or another mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence all of his misconduct could be attributed to PTSD or another mental health condition."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's mental health issues (specifically his PTSD and Major Depressive Disorder) mitigated the misconduct used to characterize his OTH discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors for some of the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions) (GEN)" is appropriate at this time along with certain conforming changes to his DD Form 214.

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Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions on active duty. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and equity, that the Petitioner merits a GEN characterization of service and no higher.

Additionally, the Board concluded Petitioner's narrative reason for separation and separation code should also be changed, as the misconduct committed by the Petitioner was mitigated by his mental health issues. Specifically, the Board felt that changing the narrative reason for separation to Secretarial Authority would be more appropriate than continuing to label the separation as misconduct.

The Board did not find an injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. Further, the Board determined any injustice in Petitioner's record is adequately addressed with the corrective action recommended below.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

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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.

1/13/2023

[REDACTED]
Executive Director
[REDACTED]