



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

█
Docket No: 6557-22

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 discharge be upgraded from "General (Under Honorable Conditions)" to "Honorable" characterization of service on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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 including references (b) through (e). In addition, the Board considered the advisory opinion (AO) furnished by qualified mental health provider. The Petitioner was offered an opportunity to respond but chose not to do so.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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 limitations was waived in accordance with the Kurta Memo.

c. Petitioner previously petitioned this Board and was denied relief on 9 September 2014.

d. The Petitioner enlisted in the United States Marine Corps and began a period of active service on 24 May 1993.

e. On 7 October 1993, Petitioner was given an Administrative Counseling (Page 11) concerning deficiencies in his performance and conduct, specifically due to an absence from his appointed place of duty, dereliction of duty, and failure to perform his assigned duties.

f. In December 1994, Petitioner received a citation for failure to wear a seatbelt.

g. On 19 September 1995, Petitioner was given an Administrative Counseling (Page 11) concerning deficiencies in his performance and conduct, specifically due to wearing an earring and substandard professionalism.

h. In October 1995, Petitioner was apprehended by civilian authorities for driving under the influence of alcohol (DUI), driving without a license, and driving 68 mph in 45 mph zone. He was formally counseled for his poor judgment on 5 October 1995.

i. In July 1996, Petitioner was cited by base security for driving while on base suspension.

j. On 6 August 1996, Petitioner was awarded nonjudicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92, for disobedience by wearing earrings in both ears while driving through the main gate.

k. On 22 October 1996, Petitioner was awarded his second NJP for violating UCMJ Article 92 for disobedience.

l. On 21 January 1997, Petitioner received his third and final NJP for violating UCMJ Article 86, for failure to go to required physical training, and Article 92, for disobedience by driving with suspended privileges.

m. On 7 February 1997, Petitioner's command initiated administrative separation (ADSEP) proceedings by reason of misconduct due to minor disciplinary infractions. Petitioner elected his right to consult with qualified counsel and his right to a hearing before an Administrative Separation Board. On 3 March 1997, by a vote of 3 to 0, the ADSEP Board found that Petitioner

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

committed misconduct and recommended administrative discharge with a General (Under Honorable Conditions) (GEN) character of service.

n. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that he was separated from the Marine Corps, on 25 April 1997, with a GEN characterization of service based on misconduct due to minor disciplinary infractions and assigned an RE-4 reenlistment code.

o. Petitioner contends that in 1994, he "had to witness and recognized a dead Marine...left in a sewer ditch to die...his body was decomposing." Petitioner submitted media coverage of the incident in support of his claim. Petitioner provided evidence of the disability determination made by the Department of Veterans Affairs (VA) for his diagnosed PTSD and an August 2022 evaluation from a psychiatrist listing diagnoses of PTSD and Major Depressive Disorder linked to his "military overseas traumatic experience." Petitioner also provided records from July 2020 to August 2021 noting a "history of PTSD and Alcohol Use Disorder."

p. For purposes of clemency and equity consideration, Petitioner provided post-service certifications.

q. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 3 November 2022. The Ph.D. noted in pertinent part:

There is no evidence that he 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. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service and attributed to experiences in service. Unfortunately, there are inconsistencies in the service record and his report to providers regarding the purported 'car-jacking' incident. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, which began prior to the first purported trauma and continued throughout his military service. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to symptoms of PTSD."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. The Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in a GEN discharge. However, in light of references (b) through (e), after reviewing the record holistically, and given the totality of the

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to Honorable purely as a matter of clemency. In making its finding, the Board concurred with the AO that Petitioner is currently struggling with PTSD and other mental health issues, which are related to his military service. The Board also considered Petitioner's post-service certifications and position within the community. In light of the service connected mental health issues, the Board felt that the misconduct, while frequent, was minor in nature and, therefore, a grant of clemency would be appropriate in this case.

Notwithstanding the recommended corrective action directed below, the Board concluded Petitioner's narrative reason for separation, separation code, and reentry code should remain unchanged based on their assessment that he was aware that he was committing misconduct at the time of his unauthorized absence and that he continues to be unsuitable for continued military service.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 and discharge certificate, for the period ending 25 April 1997, indicating an "Honorable" characterization of service.

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 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.

1/5/2023

