



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

[REDACTED]
Docket No. 6567-22

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] XXX XX [REDACTED] USMC

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 18 Nov 22

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 "Under Other than Honorable Conditions" discharge be upgraded. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 January 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, applicable statutes, regulations, and policies, to include references (b) through (e). The Board also considered enclosure (2), an advisory opinion from a mental health professional. Although Petitioner was afforded 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty in November 1982. He absented himself without authority from 17 June 1983 through 13 July 1983 prior to returning to military authority.

c. On 17 August 1983, Petitioner received nonjudicial punishment (NJP) for violations of the Uniformed Code of Military Justice under Article 86, for unauthorized absence (UA), Article 92, due to willfully disobeying a lawful order from a superior commissioned officer, and Article 108, for the loss of military property through neglect.

d. Petitioner requested separation in lieu of trial (SILT), on 26 September 1983, for unspecified charges. The Staff Judge Advocate reviewed and favorably endorsed his request to the Commanding General, [REDACTED] Division, Fleet Marine Forces, and he was discharged under Other Than Honorable conditions in lieu of trial by court-martial with final proficiency and conduct marks of 4.3 / 4.3.

e. Petitioner contends he suffered a mental health (MH) condition during his military service which he believes should mitigate his misconduct. He states that his recruiter promised he would be assigned to a technical field only to discover during Basic Training that his recruiter had lied when he was, instead, designated as a rifleman. He acknowledges that he allowed his disappointment to get the best of him and, as a result, failed to return from leave. He claims that he requested SILT due to facing the severity of a court-martial for his extended UA, but regrets his actions and wishes he had addressed the situation with his chain of command. He submitted no medical evidence in support of his contentions.

f. Petitioner also submitted evidence in support of consideration of his post-discharge character for a grant of clemency, consisting of five letters affirming his positive impact on his community. Specifically, Petitioner's property manager and leasing manager state that he is an asset to his community, serving as a role model to others within the apartment building, to include helping the maintenance team, maintaining responsible payment history, and displaying exceptional character. His partner and neighbor describe him as a kind soul who has regularly provided assistive care for his elderly neighbors for over 10 years by cleaning their home, taking out their garbage, and checking on their well-being regardless of his full-time work schedule or other personal concerns.

g. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration. The AO stated 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during military service or provide a nexus with his misconduct. Additional records (e.g., post-service

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mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of relief. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; additionally, the Board concurred with the AO in that Petitioner provided insufficient evidence to support his MH contentions. However, the Board favorably considered his evidence of post-discharge character, specifically observing that Petitioner presented evidence of his selfless commitment in voluntarily providing care toward the well-being of other members of his local community by being a good neighbor and good tenant. The Board found that his actions as a positive role model for others served as sufficient evidence of rehabilitation to outweigh the misconduct which resulted in his separation in lieu of trial. Accordingly, the Board determined that it is in the interest of justice, purely as a matter of clemency, to grant the requested relief as well as additional relief in changing his narrative reason for separation, separation authority, and separation code, to remove reference to his misconduct.

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 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. Additionally, the Board determined Petitioner's reentry code remains appropriate in light of his unsuitability for further military service.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 13 October 1983, his "General (Under Honorable Conditions)" discharge was issued under the authority of "MARCORSEPMAN par 6214" for the narrative reason of "Secretary of the Navy Plenary Authority" with a separation code of "JFF1."

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That no further changes be made to Petitioner's record.

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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/23/2023

[REDACTED]

Executive Director

Signed by: [REDACTED] 8