



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

█
Docket No. 6806-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
█ USMC

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

Encl: (1) DD Form 149
(2) Ph.D. ltr dtd 2 Dec 04
(3) NMC █ Mental Health Narrative Summary 14 Dec 04
(4) VA C&P Exam dtd 29 Mar 05
(5) CO █ █ Memo 1910 Legal/mwr dtd 18 May 05
(6) █ Psychiatry Memo 6320 Surg dtd 14 Jul 05
(7) Department of Veterans Affairs Rating Decision 24 Jan 06
(8) VA Medical Record 11 March 2006
(9) Advisory Opinion of 5 Nov 23

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 by granting a permanent medical retirement.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 9 November 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 the enclosures, relevant portions of the naval records, and applicable statutes, regulations, and policies to include reference (b).

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.

b. Petitioner enlisted in the United States Marine Corps and began active duty service on 17 April 2000. On 15 February 2003, Petitioner deployed to █ in support of █

[REDACTED] until 12 May 2003. In October 2004, Petitioner went to the Regimental Aid Station Clinic due to insomnia and frequent awakening. In December 2004, Petitioner's psychologist wrote a letter, enclosure (2), on behalf of the Petitioner attesting to providing mental health treatment to Petitioner regarding his diagnosis of Major Depression with "severe symptoms of suicidal ideation, poor concentration, restricted affect, sleep impairment, feelings of hopelessness, and low self-esteem." On 14 December 2004, Petitioner was hospitalized with suicidal ideation. Petitioner described six months of increasing depressive and anxiety symptoms to include suicidal ideation. His discharge diagnoses were Major Depressive Disorder, Recurrent, Severe without psychotic symptoms; Panic Disorder with Agoraphobia (extreme or irrational fear of entering open or crowded places, of leaving one's own home, or of being in places from which escape is difficult); and Borderline Personality Disorder with antisocial traits. He was discharged to outpatient psychiatric therapy at Camp Pendleton, and recommended for expeditious administrative separation due to continuing risk of doing harm to self or others due to impulsive and self-destructive behavior. The discharging psychiatric staff stated they did not consider Petitioner to possess a severe mental disease or defect and was considered competent; however, they advised he should not handle weapons or ordnance. See enclosure (3).

c. On 29 March 2005, Petitioner underwent a Department of Veterans Affairs (VA) examination which noted Petitioner had experienced one year of increasing depressive, anxiety, PTSD, and panic symptoms not relieved by current psychiatric treatment with therapy and medication. In addition, the Petitioner reported during a six-month deployment to Iraq "he saw a lot of dead bodies and a lot of human parts" and developed anxiety and irritability. It was noted that despite treatment he still has sadness, decreased energy/concentration, crying spells, panic symptoms, agoraphobia, nightmares, and flashbacks. See enclosure (4). He was diagnosed with Post Traumatic Stress Disorder (PTSD), Depression (Not Otherwise Specified), and Panic Disorder with Agoraphobia.

d. On 18 May 2005, Petitioner's Commanding Officer (CO) recommended Petitioner be administratively separated for Personality Disorder with an Honorable characterization of service, based on the [REDACTED] Psychiatrist Evaluation, See enclosures (5) and (6). On 1 September 2005, the VA rated Petitioner at 30% for PTSD. On 24 January 2006, the VA increased the rating for PTSD to 50%. See enclosure (7). On 26 February 2016, Petitioner was hospitalized for conditions of Chronic Severe PTSD. See enclosure (8).

e. Petitioner requests a disability retirement based on his mental health condition that he contends occurred in service as a result of experiencing significant trauma while deployed. Petitioner included medical records of ongoing treatment with the VA for PTSD.

f. The Board sought an advisory opinion (AO) from a licensed psychiatrist regarding Petitioner's allegations. See enclosure (9). The Physician Advisor found in pertinent part:

In my medical opinion, at the time of discharge from military service, Petitioner did suffer from mental health conditions that prevented him from reasonably performing the duties of his rank, MOS, and rating. Clinical evidence in his military and VA records indicated depressive and anxiety symptoms originating during his Iraq deployment, then worsening and developing into a primary PTSD condition,

Subj: REVIEW OF NAVAL RECORD ICO FORMER [REDACTED]

[REDACTED] USMC

with Major Depression, Panic Disorder with Agoraphobia, and Personality Disorder as contributing, though not separately unfitting, mental health conditions. Given the range of symptoms present during his military service, his level of disability would most appropriately be described as "Occupational and Social Impairment with Reduced Reliability and Productivity" which best correlates to a VA Disability Evaluation of 50%.

The AO recommended a correction of the record to show Petitioner as Unfit for the following condition with placement on the Permanent Disability Retired List (PDRL):

Post Traumatic Stress Disorder, VA Code 9411, rated at 50%, permanent and stable, (with Category II conditions-contributing but not separately unfitting of Major Depression, Panic Disorder with Agoraphobia, and Personality Disorder), combat related (CR), combat zone (CZ)

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. In keeping with the letter and spirit of reference (b), the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about traumatic or stressful events he experienced, and their possible adverse impact on his service, to include whether they qualified Petitioner for the military disability benefits he seeks. The Board concurred with the Advisory Opinion and determined there was ample evidence in Petitioner's record to support the contention that Petitioner was unfit for PTSD with a rating of 50% at the time of discharge. The Board determined that Petitioner's administrative separation was erroneous and unjustly denied Petitioner the opportunity to have these conditions evaluated by the Physical Evaluation Board. In addition, the Board concluded there was sufficient enough evidence to show Petitioner continues to experience debilitating PTSD symptoms. As a result, the Board concurred with the recommendation of the AO to place Petitioner on the Permanent Disability Retirement List (PDRL).

RECOMMENDATION

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

The Petitioner be found Unfit and placed on the PDRL for:

Post Traumatic Stress Disorder, VA Code 9411, rated at 50%, permanent and stable, (with Category II conditions-contributing but not separately unfitting of Major Depression, Panic Disorder with Agoraphobia, and Personality Disorder), combat related (CR), combat zone (CZ).

Note: Defense Finance & Accounting Service will complete an audit of Petitioner's records to determine if Petitioner is due any back pay.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] USMC

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.

12/10/2023

