



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

[REDACTED]  
Docket No. 6993-22

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 General (GEN) Under Honorable Conditions.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 13 January 2023, 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 clemency

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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, it is in the interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active service on 19 August 2003.

d. On 4 July 2004, Petitioner underwent a medical evaluation and was diagnosed with Attention Deficit Disorder with Hyperactivity (AD/HD). He began treatment for his mental health condition.

e. In August and September 2004, Petitioner was formally counseled via Page 11 Administrative Counselings concerning deficiencies in his performance and conduct, specifically addressing a period of unauthorized absence (UA) and speeding on base while his base driving privileges were suspended.

f. In September 2004, Petitioner was diagnosed with Depressive Disorder Not Otherwise Specified (NOS).

g. On 7 October 2004, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for three specifications of disobedience (consuming alcohol outside of the designated area, consuming alcohol against medical advice, and speeding) and Article 111, for three specifications of reckless driving. Petitioner did not appeal this NJP.

h. In November and December 2004, Petitioner was again formally counseled concerning deficiencies in his performance and conduct, specifically addressing periods of UA from restricted muster.

i. On 17 December 2004, participated in a sleep study, which revealed "profound hypersomnolence...most consistent with narcolepsy."

j. On 25 January 2005, Petitioner was found guilty at his second NJP for violating UCMJ Article 107, for making a false official statement, Article 108, for destruction of military property, Article 86, for two specifications of UA from his place of duty, Article 91, for

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disrespect, and Article 92, for two specifications of disobedience (failure to bring his medical record for proper storage and not maintaining proper grooming standards). Petitioner did not appeal this NJP.

k. In February 2005, Petitioner was hospitalized at an inpatient psychiatric ward for a period of five days. He was discharged with the diagnosis of Anxiety Disorder (NOS) and his mental health provider added Narcolepsy to his list of diagnoses.

l. On 2 March 2005, Petitioner was notified of administrative separation proceedings by reason of misconduct due to pattern of misconduct. Petitioner elected his right to consult with qualified counsel and his right to present his case at an administrative separation (ADSEP) board. After consulting with counsel, on 22 April 2004 Petitioner waived his right to present his case at an ADSEP board and instead submitted a request for a GEN discharge vice an OTH discharge. Defense counsel noted Petitioner's "disciplinary and psychiatric records coincide, and illustrate that the more depressed he got, the more he spiraled, and the symptoms and side effects kept feeding off of each other."

m. Prior to his discharge, Petitioner's diagnoses included Narcolepsy, Mood Disorder (NOS), Anxiety Disorder (NOS), ADHD, and Depressive Disorder (NOS).

n. On 11 May 2005, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reenlistment code.

o. In his request for relief, Petitioner expressed that the Marine Corps should have handled the situation differently. He contends that he was put on a large amount of medication for his various mental health conditions, and that his conditions were a causative factor for the behavior underlying his OTH discharge. He requests that the Board must view his mental health conditions as a mitigating factor to the misconduct and upgrade his characterization of service.

p. In connection with Petitioner's assertion that his mental health conditions mitigate 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 22 November 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed and received treatment for several mental health conditions, including Narcolepsy and Mood Disorder NOS. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct. While UA could be attributed to oversleeping associated with a sleep or mood disorder, it is more difficult to attribute reckless driving, alcohol consumption against medical advice, destruction of property, making a false official statement,

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and other disobedience to a mental health condition. The service record indicates his mental health concerns were considered during his separation proceedings. Additional records (e.g., records describing the Petitioner's mental health 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 evidence of mental health conditions experienced during military service. There is insufficient evidence all of his misconduct could be attributed to a mental health condition."

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants 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 diagnosed is-service mental health conditions mitigated the misconduct used to characterize his OTH discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms were possible causative factors for some of the misconduct underlying his discharge. 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)" is appropriate at this time along with certain conforming changes to his DD Form 214.

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, that the Petitioner merits a GEN characterization of service and no higher.

Finally, the Board concluded Petitioner's narrative reason for separation and separation code should also remain unchanged, as the misconduct committed by the Petitioner, while somewhat mitigated by the Petitioner's mental health conditions, was not completely excused or explained away by such conditions. The Board also did not find an injustice with the Petitioner's RE-4 reentry code based on his record of misconduct and unsuitability for further military service.

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RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 11 May 2005, his characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to the 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.

1/24/2023

[REDACTED]  
Executive Director  
[REDACTED]