



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

█
Docket No. 7182-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
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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
(3) Subject's naval record (excerpts)
(4) Advisory Opinion

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his Other than Honorable (OTH) characterization of service be upgraded to Honorable (HON), his narrative reason for separation be changed to "Secretarial Authority," and his reenlistment code be changed to "RE-1" in light of current guidelines as reflected in references (b) through (e). Enclosures (2) through (4) apply.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 23 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

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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 determinations (Wilkie Memo). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) furnished by a qualified mental health provider.

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. Petitioner enlisted in the Marine Corps and entered active duty on 24 October 2000.

d. Service records show that Petitioner served as a Refueler Operator (MOS 3531) in Operation [REDACTED] Freedom in [REDACTED] from 9 February 2003 to 30 May 2003. On his Post Deployment Health Reassessment (PDHRA), he checked "yes" to the question, "Did you ever feel that you were in great danger of being killed?"

e. Subsequent to this deployment, on 13 November 2003, Petitioner tested positive for marijuana on a routine urinalysis. Petitioner was screened by the Substance Abuse Counseling Center (SACC) on 2 December 2003 and did not appear to meet DSM IV criteria for Alcohol Dependence or Alcohol Abuse.

f. On 29 January 2004, Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to drug abuse. He waived his right to consult with qualified counsel and his right to present his case at an administrative separation board.

g. On 18 February 2004, petitioner pled guilty at Summary Court Martial (SCM) to violating Uniform Code of Military Justice (UCMJ) Article 112(a) for wrongful use of a controlled substance. He was sentenced to 30 days confinement, reduction in rank, and forfeitures of pay.

h. On 26 March 2004, Petitioner was discharged from the Marine Corps for misconduct – drug abuse, with an Other Than Honorable (OTH) characterization of service and an RE- 4 reentry code. His final trait average was Performance (PRO) 4.5 and Conduct (CON) 4.5 respectively.

i. Petitioner previously petitioned the Naval Discharge Review Board and was denied relief on 29 November 2007. He also previously petitioned this Board and was denied relief on 10 September 2014.

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j. Petitioner contends that he was suffering from undiagnosed mental health concerns during military service, which might have mitigated his discharge characterization of service. Petitioner has provided post-service treatment records and documentation of diagnosed service-connected PTSD as mitigation evidence. As a result, an advisory opinion was requested from a qualified mental health professional who reviewed the Petitioner's contentions and the available records and issued an AO dated 16 December 2022. Enclosure (4) states in pertinent part:

The Petitioner submitted a letter from the Veterans Consortium indicating that he has been diagnosed post-service with PTSD related to his military service in Iraq. He also submitted partial mental health notes from the VA where he was treated for and diagnosed with PTSD from January 2021 to March 2022. He submitted VA Disability Rating whereby he was found to be service connected for PTSD. He submitted a letter from [REDACTED] whereby it is also noted that he has been diagnosed with PTSD. It is possible that the veteran used marijuana to cope with symptoms of PTSD.

Enclosure (4) concludes, "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 evidence the circumstances of his separation could be attributed to PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. While the Board noted Petitioner's misconduct and does not condone his actions, it concluded that his PTSD sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence outweighed the severity of his misconduct. In making this finding, the Board substantially concurred with AO that there is evidence that Petitioner's misconduct may be attributed to service-connected PTSD. The Board highlighted the Petitioner's PTSD directly relates to his deployment serving as part of Operation Iraqi Freedom in Kuwait. The Board noted that the Petitioner's misconduct was subsequent to his deployment and consistent with the type of behavior that could be indicators of symptoms of undiagnosed PTSD. Additionally, the Board noted that the Petitioner noted a potential mental health concern on his post-deployment medical assessment. Accordingly, the Board concluded that a re-characterization of Petitioner's service to Honorable is appropriate and warranted in this case. Based on this finding, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should also be changed in the interests of justice.

The Board, however, 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 the circumstances, and that such reentry code was proper and in compliance with all Department of the Navy and Marine Core directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in Petitioner's record was adequately addressed with the recommended corrective action and Petitioner remains unsuitable 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 partial corrective action.

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 26 March 2004, his characterization of service was "Honorable", narrative reason for separation was "Secretarial Authority", separation code was "JFF1", and his separation authority was "MARCORPSEPMAN, Par 6012."

Petitioner be issued a new discharge certificate.

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.

1/31/2023

[REDACTED]
Executive Director
[REDACTED]