



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

[REDACTED]
Docket No. 7263-22
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]
XXX XX [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 PTSD," of 3 September 2014
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (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
(e) USD 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

Encl: (1) DD Form 149
(2) Case summary
(3) Advisory Opinion of 14 December 2022

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 his record be corrected to upgrade the character of his service. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 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, and references (b) through (f), which 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 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or traumatic brain injury (TBI), the 25 August 2017 guidance from the Under Secretary

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of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (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 considered enclosure (3), the 20 October 2022 Advisory Opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on 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 the enclosure 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 began a period of active duty on 8 November 2003.

d. On 26 August 2005, Petitioner received summary court-martial (SCM) for wrongful use of cocaine. Petitioner submitted a statement after his SCM and stated that he was depressed from the death of his mother and went to a party where cocaine was present. He stated he never previously abused drugs and one of his friends told him to try cocaine, since it would temporarily ease his depressions. He stated he did two lines of cocaine and that it did help a little. As a result of his drug abuse, Petitioner was notified for separation on 7 October 2005. He elected his right to consult with counsel and waived his right to an administrative board. He was given a counseling warning on 29 November 2005 for his drug use and being at this appointed place of duty. He was then again counseled again on 6 December 2005 for failure to obey general order, paraphernalia possession. On 27 March 2006, the staff judge advocate reviewed the separation package and found it to be legally sufficient. After Commanding General, Third Marine Aircraft Wing, approved the recommendation for separation and directed Petitioner be discharge, he was discharged on 19 April 2006 with an Other Than Honorable (OTH) characterization.

e. Post-discharge, the Petitioner applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied Petitioner's request, on 10 November 2010, after determining his discharge was proper as issued.

f. Petitioner contends that he was diagnosed with service related PTSD and was not treated properly. Based on this argument, he requested an upgrade in his discharge. He asserts that he has evidence of service related disability that dates back prior to his military service discharge date.

g. In light of the Petitioner's assertion of PTSD, the Board requested enclosure (3). The AO stated in pertinent part:

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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 during military service. Post-service, the VA has granted service connection for PTSD. It is possible that his substance use could have been an attempt to address unrecognized mental health symptoms.

The AO 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 some evidence his misconduct could be attributed to symptoms of PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Because Petitioner based his claim for relief in whole or in part upon his PTSD condition, the Board reviewed his application in accordance with the guidance of references (b) through (d). Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD condition, and the effect that it may have had upon his misconduct. Ultimately, the Board substantially agreed with the AO that there was evidence that Petitioner suffered from a mental health condition during his military service, and that Petitioner's misconduct may be mitigated by that condition. As a result, the Board determined his mental health condition mitigated the seriousness of his misconduct. Therefore, the Board concluded the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

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.

Further, the Board concluded that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code remain appropriate. Again, the Board considered whether a change was warranted under references (b) through (d) but concluded that any injustice existing in Petitioner's record was adequately addressed through the corrective action recommended below. Ultimately, the Board found that the mitigation evidence presented, while sufficient to support a discharge upgrade to General (Under Honorable Conditions), was insufficient to grant relief beyond what was recommended based on the seriousness of Petitioner's drug offense.

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

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RECOMMENDATION:

That Petitioner be issued a new DD Form 214 indicating that he was discharged with a “General (Under Honorable Conditions)” character of service.

That 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]