



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

█
Docket No. 7409-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX XX █ 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 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 his discharge characterization of service be upgraded.

2. The Board, consisting of █, █, and █, 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 on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of her naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered the advisory opinion (AO) from a qualified medical professional dated 23 November 2022. 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 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 U.S. Marine Corps and began a period of active duty on 23 October 1991. Later, Petitioner requested a humanitarian transfer due to the medical

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condition of his grandmother who he asserts raised him. On 28 June 1993, Petitioner commenced a period of unauthorized absence (UA) which lasted 129 days.

d. Unfortunately, the documents related to Petitioner's administrative separation are not in his official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

e. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals Petitioner was separated from the Marine Corps on 9 December 1993 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Conduct triable by courts-martial (request for discharge for the good of the service)," his separation code is "KFS1," and his reenlistment code is "RE-4."

f. Petitioner contends he incurred unrecognized Post Traumatic Stress Disorder (PTSD) in 1993 when he learned of his grandfather's death which caused him to recall sustained childhood abuse.

g. For purposes of clemency and equity consideration, Petitioner provided documentation in the form of a personal statement, character letters, OMPF documents, a financial summary letter from [REDACTED] for consideration.

h. In connection with Petitioner's assertion that he incurred PTSD during military service, which might have mitigated the circumstances surrounding his separation from service, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health professional who reviewed the Petitioner's request for correction to his record and provided the Board with an AO. 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 post-service evidence of a diagnosis of PTSD that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. Additional records (e.g., complete 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient 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. The Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references (b) through (e), after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions). The Board weighed the seriousness of Petitioner's misconduct against the mitigation evidence submitted and determined that it was in the interests of justice to grant relief. In making this finding, the Board noted Petitioner had no other disciplinary issues except his period of UA and considered the extenuating circumstances surrounding his humanitarian transfer request.

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 Sailor'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 and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Further, the Board also concluded that Petitioner's narrative reason for separation, separation code, separation authority, and reentry code remain appropriate in light of his record of misconduct. Ultimately, the Board determined that any injustice in his record was adequately addressed through the recommended corrective action.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 9 December 1993, indicating his character of service as "General (Under Honorable Conditions)."

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 Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2/2/2023

