



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

█
Docket No. 7430-22
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) █ Memo of 3 Sep 14 (Hagel Memo)
(c) █ Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) █ 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 be upgraded to an Honorable characterization of service, and his separation and reenlistment codes be changed.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 30 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 15 December 2022. Although Petitioner was provided the 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, the statute of limitation was waived in accordance with the Kurta Memo.

c. During Petitioner's enlistment processing he disclosed previous marijuana use and was granted an enlistment waiver. Petitioner enlisted in the U.S. Marine Corps (USMC) and began a

period of active duty on 5 August 2002. On 27 June 2003, Petitioner received his first nonjudicial punishment (NJP) for larceny. He was counseled regarding the aforementioned deficiency and advised that failure to take corrective action may result in administrative separation or judicial proceedings. On 19 November 2003, Petitioner received a second NJP for being in an unauthorized absence (UA) status from his appointed place of duty. On 26 September 2003, Petitioner was found guilty at a summary court-martial (SCM) of the wrongful use of THC and sentenced to be reduced in rank to E-1, to forfeit \$767.00 pay per month for one month, and to be confined for 30 days. On 20 October 2003, Petitioner was counseled concerning his illegal drug involvement and chose not to make a statement. He was further counseled concerning his refusal of substance abuse treatment and he again chose not to make a statement. On 21 November 2003, Petitioner was notified of his pending administrative separation by reason of drug abuse, at which time he waived his right to consult with military counsel and to have his case heard before an administrative discharge board. His commanding officer recommended he be discharged with an Other Than Honorable (OTH) characterization of service and, on 22 December 2003, Petitioner was so discharged. On 31 January 2006, Petitioner's request for a discharge upgrade via the Naval Discharge Review Board (NDRB) was denied.

d. Petitioner contends, he incurred Post Traumatic Stress Disorder (PTSD) during military combat.

e. For purposes of clemency and equity consideration, Petitioner provided documentation in the form of a statement, a copy of his DD Form 214, Department of Veterans Affairs (VA) documents, and OMPF documents for consideration.

f. In connection with Petitioner's assertion that he incurred PTSD during military combat, 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. Post-service the VA has determined service connection for PTSD. Unfortunately, the available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in service. Additional records (e.g., active duty or post-service mental health records describing Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may 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 PTSD."

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, 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 and liberal consideration, the Board concluded Petitioner's discharge characterization should be upgraded 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. Additionally, the Board found that Petitioner's assigned reenlistment and separation codes remain appropriate in light of his record of serious misconduct and unsuitability for further military service. In making this finding, the Board concurred with the AO that there is insufficient evidence Petitioner's misconduct could be attributed to PTSD. Ultimately, the Board determined any injustice in Petitioner's record was adequately addressed with 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 indicating the 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.

2/12/2023

