



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

[REDACTED]
Docket No. 7538-22

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] 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 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 (Under Honorable Conditions) (GEN).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], 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. 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 references (b) through (e). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's response to the AO.

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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. The Petitioner enlisted in the Marine Corps and began a period of active service on 20 August 1964.

d. On 28 May 1965, Petitioner left his post without being relieved, took government vehicle off station, parked vehicle and left his side-arm in out and remained absent from his station until 29 May 1965. As a result, the command referred Petitioner for a psychiatric evaluation. The medical provider noted that the Petitioner's father killed his mother in front of him and is now in jail, and that Petitioner "has had long standing problem getting along with other people – always fighting – can't take orders." Petitioner was diagnosed with Passive Aggressive Personality and the medical provider concluded that "administrative discharge would be appropriate."

e. On 7 June 1965, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for a one-day period of unauthorized absence. Petitioner did not appeal his NJP.

f. On 9 June 1965, Petitioner's Commanding Officer (CO) recommended that he be discharged by reason of "Unsuitability." The CO concurred with the recommendation of the Neuro-psychiatric clinic that the "Petitioner does not meet necessary reliability standards."

g. On 15 June 1965, the Commandant of the Marine Corps disapproved the request to discharge due to "Unsuitability" and Petitioner was reassigned to [REDACTED] and deployed to [REDACTED].

h. From 28 August 1965 through 21 September 1966, Petitioner was deployed to [REDACTED] as a Rifleman (MOS 0311). He participated in numerous combat operations against insurgent forces while in [REDACTED] earning him the [REDACTED] Campaign Medal and the [REDACTED] Service Medal.

i. While in theatre, Petitioner was referred for another psychiatric evaluation due to "difficulties in maintaining attention and accomplishing duties...has been bothered by the memory of his mother's death." The psychiatrist also diagnosed Petitioner with Passive Aggressive Personality and noted, "[h]e did appear manipulative...and overly hostile....Pt's past hx [history] indicates a continuing pattern of obstructionism and manipulation of situations to suit his needs. Continued retention in the MC will only result in more of the same. I strongly

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recommend that he be discharged from the military service administratively, by reason of unsuitability ...”

j. On 13 September 1965, Petitioner was found guilty at his second NJP of violating UCMJ Article 113, for sleeping while on post. On 4 April 1966, Petitioner was found guilty at his third NJP of violating UCMJ Article 92, for violating a lawful order (going out of bounds in [REDACTED]), and Article 134, for incapacitation for the proper performance of his duties and indulgence in alcoholic beverages. Both of these NJPs occurred while deployed to [REDACTED]. Petitioner did not appeal either NJP.

k. On 24 May 1967, Petitioner was found guilty at his fourth NJP of violating UCMJ Article 92, for violating a lawful order, and Article 134, for disobedience. Petitioner did not appeal his NJP.

l. In June 1967, Petitioner was referred to his third psychiatric evaluation, wherein the psychiatrist noted the same diagnosis and again recommended separation.

m. On 26 June 1967, Petitioner was found guilty at Summary Court Martial (SCM) of violating UCMJ Article 92, for two specifications of failing to obey a lawful order. The very next month, on 18 July 1967, Petitioner was found guilty at his second SCM of violating UCMJ Article 91, for two specifications of failing to obey a lawful order and for being disrespectful in language to a superior NCO, and Article 86, two specifications of UA.

n. On 8 November 1967 and 27 December 1967, Petitioner was convicted in civilian court on charges of Grand Theft Auto, which were later reduced to “joy riding.”

o. On 29 January 1968, Petitioner was notified of administrative separation proceedings by reason of frequent involvement of a discreditable nature with civil and military authorities. Petitioner waived his right to consult with qualified counsel and his right to present his case at an administrative separation board.

p. Ultimately, on 12 April 1968, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reenlistment code.

q. At the time of Petitioner’s separation from the Marine Corps, his overall active duty trait average was 3.4 in conduct and 3.3 in proficiency. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

r. In his application for relief, Petitioner contends that he was suffering from undiagnosed mental health conditions related to a childhood trauma, which was aggravated by his combat exposure in [REDACTED]. Petitioner requests that the Board view his mental health condition as a factor that might have mitigated his discharge character of service. In support of his request, Petitioner provided evidence from a mental health provider dated 9 January 2023, which states

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that Petitioner has been treated since 28 November 2022 for “Post-traumatic stress disorder (partially due to occurrences at the military), Bipolar disorder, current episode depressed, mild or moderate severity, unspecified, Generalized anxiety disorder, and Insomnia due to other mental disorder.”

s. In connection with Petitioner’s assertion that he incurred and/or exacerbated a mental health condition during military 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 15 December 2022. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during three separate psychiatric evaluations. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately he has provided no medical evidence in support of his claims. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

t. The Board also considered the Petitioner’s response to the AO, which included a letter from his mental health provider dated 9 January 2023.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants relief. 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 mental health issues (specifically his in-service diagnosis of Passive Aggressive Personality (Personality Disorder)) mitigated the misconduct used to characterize his OTH discharge. In making this finding, the Board agreed with the AO that Petitioner’s personality

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disorder diagnosis was based on observed behaviors and performance during his period of service, and that such diagnosis is pre-existing to military service by definition and indicates lifelong characterological traits unsuitable for military service. The Board also concurred there is insufficient evidence of a mental health condition, aside from the diagnosed Personality Disorder, that may be attributed to military service. Despite these findings, the Board felt that relief was appropriate as a matter of equity. The Petitioner was recommended for separation due to unsuitability on three psychiatric evaluations that spanned most of his time in service. The Marine Corps was on notice that Petitioner was unsuitable for continued service due to his diagnosis, but chose to retain him and even deploy him to a combat zone. The Board felt that Marine Corps assumed a risk by exposing a mentally unsuitable Marine to combat stress and, unsurprisingly, this choice resulted in the commission of further misconduct. The Board concluded that Petitioner should have been separated after his initial psychiatric evaluation and recommendation of discharge, which could have resulted in a much more favorable characterization of service. 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) (GEN)" 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.

Additionally, the Board concluded Petitioner's narrative reason for separation and separation code should also be changed, as the misconduct committed by the Petitioner was mitigated by his in-service diagnosis of a Personality Disorder. Specifically, the Board felt that changing the narrative reason for separation to Secretarial Authority would be more appropriate than continuing to label the separation as misconduct.

The Board did not find an injustice with the Petitioner's RE-4 reenlistment code. The Board concluded the Petitioner was assigned the correct reenlistment code based on his extensive record of misconduct and unsuitability for military service, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in his record was adequately addressed with the recommended corrective action.

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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's character of service be changed to "General (Under Honorable Conditions)," narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," and the separation code be changed to "JFF1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

2/12/2023

