



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

[REDACTED]
Docket No. 7699-22

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 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)
(f) MCO 1900.16 w/CH 2

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 27 Dec 22

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 punitive discharge be upgraded to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 13 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, applicable statutes, regulations, and policies, to include references (b) through (e).

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 20 May 2002. He deployed to [REDACTED] in support of contingency operations, from 21 March 2003 through 23 May 2003, earning a Combat Action Ribbon (CAR).

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c. From 14 October 2003 until his surrender on 27 January 2004, Petitioner was in an unauthorized absence (UA) status. He was ordered into pre-trial confinement on 3 February 2004 and self-admitted substance use during his UA as well as the fact that he was a witness to a pending civilian murder case.

d. Petitioner was tried by Special Court-Martial (SPCM) on 28 April 2004 with findings of guilty for violations of the Uniform Code of Military Justice under: Article 80, attempted wrongful use of a controlled substance; Article 85, UA; Article 87, missing movement; and two specifications of Article 112a, wrongful use of marijuana. Per the data recorded in his NAVMC 118 (13), Record of Conviction by Court Martial, his adjudged sentence was "to be reduced to the pay grade of E-1, to forfeit \$150 pay per month for a period of 12 months, to be confined for a period of 101 days." Of note, page 2 of Petitioner's "Individual Separation Information" specifies a different the period of lost time for the reason of confinement, totaling 155 days, running from 3 February 2004 until 6 July 2004.

e. Petitioner continued serving for the remainder of his enlistment without further misconduct but also without his drug use having been reviewed under regulations requiring mandatory administrative separation processing. However, Petitioner was counseled, on 1 February 2007, that he would be signed a reenlistment eligibility code of "RE-4" incident to this discharge on 4 February 2007. He was discharged with an issued characterization of service as "Under Other than Honorable Conditions" (OTH) and reentry code of "RE-4" for the narrative reason for separation of "Completion of Required Active Service."

f. Per paragraph 1004 of reference (f), the characterization of OTH upon separation at the end of active service is "Not authorized."

g. Petitioner contends that his OTH was issued at the completion of his end of obligated active service "without justification or cause" in violation of reference (f). He acknowledges his misconduct and SPCM conviction, but states that his sentence did not include a punitive discharge and he was given an opportunity to continue with his career rather than face administrative separation. He believes that, because he continued to serve without further misconduct and reached the end of his obligated service, his OTH was issued in error and, with respect to the proper characterization of service, in spite of his misconduct, that his service merits consideration for an "Honorable" (HON) rather than "General (Under Honorable Conditions)" (GEN) discharge due to his misconduct being attributable to combat-incurred post-traumatic stress disorder (PTSD).

h. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration, which is considered favorable to Petitioner's contentions. The AO stated in pertinent part:

The Petitioner submitted VA disability rating letter which indicates 50% service connection for PTSD with secondary Major Depressive Disorder and Alcohol Abuse. He submitted several medical treatment notes (Psychiatry, primary care,

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and psychology) from the VA Medical Center ranging from October 2021 to October 2022 all indicating treatment for nightmare disorder and PTSD. He has been taking Prazosin for nightmares, Trazadone for Insomnia and Effexor for treatment of both PTSD and depression. He also submitted a letter from a psychiatrist whom he saw at the San Francisco VA Medical Center who very clearly indicated that the Petitioner had been diagnosed with PTSD due to his deployment to [REDACTED]. The letter included significant detail regarding a number of traumatic events and symptoms that the Petitioner had verbalized. It would not be uncommon for someone suffering from PTSD to avoid or escape from triggers and/or reminders of their trauma by using substances and/or by going on unauthorized absence as a means of escape.

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 evidence the circumstances of his separation could be attributed to PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of relief plus additional relief. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board found that it constituted error to issue an OTH characterization upon his discharge for the reason of completion of his required active in light of the prohibition in reference (f). Additionally, although the Board noted that Petitioner could have been issued a reentry code of "RE-4B" due to his documented in-service drug use, the Board found no evidence to support that the Commandant of the Marine Corps approved issuing a reentry code of "RE-4" based upon the content of the counseling entry documenting this code. In light of this fact, in addition to the clear error regarding the OTH, the Board found that the "RE-4" code was also issued in error and determined that the appropriate code should have been "RE-3C." Regarding evidence of additional potential errors, the Board further concluded that Petitioner's records should be reviewed to confirm the correct period of his confinement in relation to the lost time adjustment for his dates of service and to confirm issue of the appropriate awards for the period of his combat service.

With respect whether Petitioner's characterization of service should have been either HON or GEN, the Board concurred with the AO that Petitioner's traumatic experiences during his combat service and resulting PTSD contributed to the misconduct documented by his SPCM conviction. Given the nature of the offenses as being common to those resulting from symptoms and behaviors of PTSD, the Board found that Petitioner's mental health condition fully mitigated his in-service misconduct when considered in conjunction with the evidence of his rehabilitation and successful completion of his obligated service. As a result, the Board found that the totality of favorable matters in support of Petitioner's contentions outweighed his misconduct and merited a

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fully Honorable characterization, notwithstanding that his chain of command disregarded the requirement of mandatory processing for administrative separation. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief as well as additional relief.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 4 February 2007, his "Honorable" discharge was issued under the authority of "MARCORSEPMAN par 6214" for the narrative reason of "Secretarial Authority" with a separation code of "JFF1" and a reentry code of "RE-3C" after confirming the correct period of lost time and his entitlement to awards.

That Petitioner be issued an "Honorable" discharge certificate.

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

1/27/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]