



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

■
Docket No. 7796-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ■■■■■
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Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 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 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 28 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 for an upgrade of his characterization of service.

2. The Board, consisting of ■■■■■, reviewed Petitioner's allegations of error and injustice on 25 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 regulation 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 Marine Corps and began a period of active duty on 29 August 1994.

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d. On 14 June 1997, Petitioner was convicted by a special court-martial (SPCM) of two specifications of wrongful use of marijuana. As punishment, he was sentenced to confinement, reduction in rank, and a Bad Conduct Discharge (BCD).

e. On 22 July 1997, Petitioner received non-judicial punishment (NJP) for failure to go at the time prescribed to his appointed place of duty.

f. Subsequently, the BCD adjudged was approved at all levels of review and, on 2 December 1998, Petitioner was so discharged.

g. Post-discharge, the Naval Discharge Review Board (NDRB) reviewed Petitioner's application, found that some degree of clemency was warranted in his case, and determined that an upgrade of his character of service from BCD to an Under Other Than Honorable Conditions was warranted.

h. Petitioner contends he incurred PTSD from a vehicle accident in which he accidentally struck another Marine, which contributed to his misconduct.

i. For purposes of clemency consideration, the Board noted Petitioner provide an advocacy letter and supporting documentation describing post-service accomplishments.

j. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is evidence the Petitioner was diagnosed with PTSD in military service. His misconduct does follow formal counseling regarding the motor vehicle accident he caused, which could be a traumatic precipitant. Although there is evidence of pre-service marijuana use, it is possible his use in service was exacerbated by PTSD symptoms, given his period of successful service prior to his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would strengthen the opinion.

The AO concluded, "it is my considered clinical opinion there is evidence of a diagnosis of PTSD that may be attributed to military service. There is some evidence his misconduct could be attributed to PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's BCD discharge and subsequent discharge upgrade to Under Other Than Honorable Conditions. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

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[REDACTED]

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially concurred with the AO that there is evidence of a diagnosis of PTSD that may be attributed to military service, and there is some evidence his misconduct could be attributed to PTSD.

In addition to applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct in accordance with references (b) through (d), the Board also noted Petitioner's submission of supporting documentation and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition upon his misconduct, as discussed above. Based upon this review, the Board found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged and, therefore, the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

The Board considered whether Petitioner's characterization of service should be upgraded to fully Honorable, but determined that the mitigating circumstances did not so significantly outweigh Petitioner's misconduct to warrant such extraordinary relief. 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 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.

Although not specifically requested by the Petitioner, the Board also determined that Petitioner's narrative reason for separation, separation code, and separation authority should be changed in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting, for the period ending 2 December 1998, that indicates his character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," SPD code was "JFF1," and the separation authority was "MARCORPERSMAN Para 6014."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

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[REDACTED]

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.

2/10/2023

[REDACTED]
Executive Director
[REDACTED]