



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

■
Docket No. 7997-22

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) USECDEF Memo of 25 Aug 2017 (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 23 Jan 23

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 an upgrade of his characterization of service and change his narrative reason for separation. Enclosures (2) and (3) apply.

2. The Board, consisting of ■■■■■, reviewed Petitioner's allegations of error and injustice on 7 April 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an 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 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.

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c. Petitioner enlisted in the Marine Corps and began a period of active duty on 8 November 1990. Petitioner completed this enlistment with an Honorable characterization of service on 26 October 1994. On 27 October 1994, Petitioner reenlisted and completed this enlistment on 19 September 1997 with an Honorable characterization of service. On 20 September 1997, Petitioner reenlisted and completed this enlistment on 21 March 2000 with an Honorable characterization of service. On 22 March 2000, Petitioner reenlisted again and completed this enlistment on 13 November 2003 with an Honorable characterization of service. Petitioner immediately reenlisted on 14 November 2003.

d. On 3 June 2005, Petitioner was convicted by a special court-martial (SPCM) of conspiracy, false official statement, and larceny. As punishment, Petitioner was sentenced to confinement, forfeiture of pay, and reduction in rank.

e. On 17 September 2005, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense. Petitioner was advised of his procedural rights and elected his right to consult with military counsel and present his case to an administrative discharge board (ADB). On 17 March 2006, an ADB convened and found that Petitioner committed misconduct due to commission of a serious offense, and recommended administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. However, the ADB recommended the administrative discharge be suspended.

f. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) concurring with the ADB's findings but did not concur with recommended suspension of the administrative separation. Subsequently, the SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Marine Corps. On 14 June 2006, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to commission of a serious offense. Petitioner was issued a DD Form 214 that did not document his previous periods of Honorable service.

g. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 26 November 2012, based on their determination that his discharge was proper as issued.

h. Petitioner contends that he is innocent of the crime for which he was discharged from the military. Petitioner asserts that everything happened so quickly and he felt as though everyone was very quick to place judgment upon him. He argues that no one took the time to slow down and look at the small detailed facts that proved his innocence.

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided a DVD and advocacy letters, but no supporting documentation describing post-service accomplishments.

j. Because Petitioner based his claim for relief in whole or in part upon his mental health condition, his application and records were reviewed by a qualified mental health professional

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who provided the Board with enclosure (3), an advisory opinion (AO) for the Board's consideration. 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 no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly as denies having engaged in wrongdoing. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient 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 partial relief in the interests of justice.

In regard to Petitioner's request for an upgrade of his characterization of service and change his narrative reason for separation, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to commission of a serious offense.

The Board applied liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) through (d), 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 did not believe that relief is warranted under the totality of the circumstances. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his unit. Furthermore, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence his misconduct could be attributed to PTSD. As the AO noted, there is no evidence that Petitioner 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. Additionally, Petitioner's personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

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In addition, the Board determined that an Honorable discharge was appropriate only if the service member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. The Board concluded by opining that Petitioner's conduct constituted a significant departure from that expected of a service member, even under the liberal consideration standards for mental health conditions, and continues to warrant an OTH characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation and his prior periods of Honorable service, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct. Accordingly, given the totality of the circumstances, the Board determined Petitioner's request does not merit relief.

However, as previously discussed, after review of Petitioner's official military personnel file (OMPF), the Board noted Petitioner has a period of Honorable service from "8 November 1990 to 13 November 2003." The Board determined Petitioner's DD Form 214 fails to document this period of service.

Applicable regulations authorizes the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization except "Honorable." As a result, the Board determined Petitioner's naval record shall be corrected to reflect his continuous Honorable active service.

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's naval record be corrected to show his period of service from "8 November 1990 to 13 November 2003" as Honorable. Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "8 November 1990 to 13 November 2003."

That no further changes be made to Petitioner's 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.

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

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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.

4/18/2023

[REDACTED]

Executive Director

[REDACTED]