



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

█
Docket No. 8283-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█

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)

Encl: (1) DD Form 149 with enclosures
(2) Case summary

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, via his legal representative, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his General (Under Honorable Conditions) (GEN) characterization of service be upgraded to Honorable (HON).

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 3 April 2023, and, pursuant to its regulations, determined 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 his naval service records, and applicable statutes, regulations, and policies, to include references (b) – (e). As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with an Advisory Opinion (AO) on 7 February 2023. Petitioner was afforded an opportunity to respond to the AO, but 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

b. Petitioner enlisted in the U.S. Marine Corps and entered active duty on 13 August 2001. On 30 July 2002, Petitioner was counseled concerning his inability to be at his appointed place of duty on time and chose not to make a statement. On 27 August 2002, Petitioner received nonjudicial punishment (NJP) for a period of UA. On 2 October 2002, Petitioner was again counseled regarding his repeated violations of unauthorized absence and again chose not to make a statement. On 11 August 2003, per a mental health unit recommendation, Petitioner was diagnosed with Personality Disorder NOS (Not Otherwise Specified) with Obsessive Compulsive Features and recommended for administrative separation for convenience of the government (COG) by reason of Personality Disorder. On 21 August 2003, Petitioner was notified of his pending administrative discharge for his personality disorder, at which time he waived his right to consult with his military counsel. Petitioner's Commanding Officer (CO) recommended Petitioner be discharged with a GEN characterization of service. On 19 September 2003, the separation authority accepted the recommendation and directed Petitioner be discharged. On 3 October 2003, Petitioner was so discharged.

c. Petitioner contends he incurred mental health concerns during military service, which might have mitigated his misconduct.

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

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over several outpatient visits. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations 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. Post-service, the VA has granted service connection for Major Depressive Disorder. However, there is no evidence of error in the in-service diagnosis. His in-service misconduct appears to be consistent with his diagnosed personality disorder. 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 AO concluded, "it is my clinical opinion there is evidence from the VA of a mental health condition that may be attributed to military service (Major Depressive Disorder). There is insufficient evidence of error in his in-service personality disorder diagnosis. There is insufficient evidence to attribute his misconduct to a mental health condition other than his diagnosed personality disorder."

e. Petitioner submitted a copy of his DD 214, official military personnel file (OMPF) and department of veterans affairs (VA) documents for consideration.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) - (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants favorable action in the form of partial relief. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

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. In making its findings, the Board considered the brevity of Petitioner's active service and his record of misconduct. Further, the Board concurred with the AO that there is insufficient evidence to attribute his misconduct to a mental health condition other than his diagnosed personality disorder. Finally, the Board also concluded that Petitioner's reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the corrective action recommended below.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new DD Form 214 indicating the narrative reason for separation was "Secretarial Authority", the separation authority was "MARCORSEPMAN par 6214", and the separation code was "JFF1".

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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.

4/17/2023

[REDACTED]
Executive Director
[REDACTED]