



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

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Docket No. 8353-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ■■■■■
■■■■■ USMC

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 13 Feb 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 for an upgrade of his characterization of service.

2. The Board, consisting of ■■■■■ and ■■■■■, reviewed Petitioner's allegations of error and injustice on 22 February 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 5 June 1967. Petitioner subsequently completed this enlistment with an Honorable characterization of service and, on 8 July 1970, immediately reenlisted.

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d. On 22 June 1971, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA).

e. On 28 April 1971, Petitioner was convicted by a special court-martial (SPCM) of UA totaling six days. As punishment, he was sentenced to reduction in rank.

f. On 28 September 1972, Petitioner was convicted by a special court-martial (SPCM) of five specifications of UA totaling 156 days, wrongfully impersonating a commissioned officer and drunk in uniform in a public place. As punishment, he was sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD).

g. Subsequently, the BCD adjudged was approved at all levels of review and, on 11 May 1973, Petitioner was so discharged.

h. Petitioner asserts that the Marine Corps “taught him to kill the enemy, take orders and work as a team,” but they did not teach him how to deal with seeing Marines die around him. Petitioner further asserts that his dreams of seeing two Marines in his presence killed was “killing” him so he started drinking alcohol to sleep; back in the states he was drinking himself to death, he asked for help but did not receive any.

i. For purposes of clemency consideration, the Board noted Petitioner provide health care documents but no supporting documentation describing post-service accomplishments or advocacy letters.

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:

The therapy records do indicate many potentially traumatic events sustained while in Vietnam to include witnessing death, injury, “close-calls,” frequent fears of death, rocket attacks, and fire fights. Although there is no evidence contained within his service record that he was diagnosed with a mental health condition, his frequent absences and alcohol use could have been indicators that he was avoiding or trying to cope with PTSD symptoms.

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

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. However, because Petitioner based his claim for relief in whole or in part upon his PTSD and Mental Health Condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) through (e).

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

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 11 May 1973, that indicates his character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Directed by the Secretary of the Navy to Correct Official Records," SPD code was "JFF2," and the separation authority was "MARCORPERSMAN Para 6012.1g."

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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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.

3/7/2023

[REDACTED]

Executive Director

[REDACTED]