



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

█
Docket No. 8527-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX XX █/█ 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)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 27 Feb 23
(3) Rebuttal to AO of 27 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 that his discharge be upgraded and that his narrative reason for separation be changed to reflect “Secretarial Authority” or “Miscellaneous / General Reasons.” Enclosures (1) through (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 24 March 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). Additionally, the Board also considered enclosure (2), the advisory opinion (AO) furnished by a qualified mental health provider, along with Petitioner's response to the AO.

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.

b. Petitioner enlisted in the Marine Corps and, after receiving waivers for two non-minor traffic offenses and for possession and use of marijuana, began a period of active duty on 7 May

2001. During his initial training, he suffered a stress fracture to his left tibia and was temporarily reassigned to the Medical Rehabilitation Platoon during his recovery period.

c. Following his assignment to guard duty at his first duty station, Petitioner suffered a second stress fracture. On 4 January 2002, he received emergency care following a suicide attempt. The medical note from this incident documented that he was “frustrated from being ignored by his command after he injured his leg” and that he had “pleaded” with the Corpsman to assist in getting his military occupational specialty changed to something other than infantry because of his injuries. The attending psychologist diagnosed Petitioner with Personality Disorder, not otherwise specified but with borderline traits, and recommended his immediate separation.

d. Petitioner was administratively counseled, on 8 January 2002, regarding his deficiencies in performance and conduct, to include that he was not performing his daily duties in an appropriate manner and that his personal issues were adversely affecting his ability to continue training. The recommended corrective action specified that he should: obey all regulations and the Uniform Code of Military Justice; follow orders, directions, and guidance from his chain of command; improve attention to daily duties; use his chain of command to assist with problem solving; and, return to a full duty status to commence training.

e. Petitioner’s chain of command submitted non-medical evidence of his continued substandard performance on 26 March 2002, elaborating that he had no disciplinary problems but had failed to correct identified deficiencies in performance after being duly counseled. This letter described that Petitioner did not have the mental focus to handle the demands of being a Marine and was a negative influence on those around him. His Basic Information and Training records, dated 2 April 2002, reflected average proficiency and conduct marks of 4.4 and 4.4.

f. Petitioner was notified, on 11 April 2002, of processing for administrative separation due to his failure to adapt to the Marine Corps environment, citing a diagnosis of “adjustment disorder.” Petitioner waived applicable rights and was recommended for discharge under honorable conditions on the basis that he had received corrective administrative counseling but had failed to correct his performance deficiencies. Following approval of his discharge by the Commanding General, Marine Corps Base [REDACTED] Petitioner was discharged on 31 May 2002.

g. Petitioner contends through counsel that he was required to be issued an “Honorable” characterization at the time of his administrative discharge because his proficiency and conduct ratings met the established standards for such discharge and that he was unfairly separated for a “lifelong” personality disorder which he believes he does not have based on subsequent mental health evaluations. He also contends that changes to policies and procedures since his discharge would provide more protection today to prevent an improper discharge based on an alleged personality disorder. Letters submitted in support of Petitioner’s contentions indicate that he has continued to struggle with his mental health symptoms since his discharge, has resigned from or been terminated from multiple jobs due to mental health concerns, and has attempted to commit suicide at least two additional times.

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

h. Because Petitioner contends a mental health disorder affected the circumstances of his discharge, the Board also requested enclosure (2), the AO, for consideration. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to, and the psychological evaluation performed by the mental health clinician. 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 mental health diagnoses that are temporally remote to military service. There is no evidence of error in his in-service diagnosis. 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 post-service evidence of mental health conditions that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition, other than his diagnosed personality disorder."

i. Petitioner submitted a rebuttal to the AO in which counsel reiterated the opinion that military service triggered Petitioner's current mental health diagnoses and that his Personality Disorder was misdiagnosed and presents a stigmatizing label on his military record because he served honorably.

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 partial relief with respect to the narrative reason for separation. The Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

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.

However, with respect to Petitioner's contentions regarding his characterization of service, the Board concurred with the AO that there is insufficient evidence the in-service diagnosis of Personality Disorder was erroneous. Further, the Board noted that Petitioner's command

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

presented him with corrective administrative counseling outlining his performance deficiencies and the specific guidance he should follow to remedy his deficiencies. Notwithstanding that Petitioner had previously received proficiency and conduct marks of 4.4 and 4.4, the Board noted that Petitioner's chain of command submitted non-medical documentation of his continued performance deficiencies, which was considered in the course of his involuntary administrative separation for failure to adapt to a Marine Corps environment. The Board applied a presumption of regularity that, although there is no record of Petitioner's final proficiency and conduct marks issued after his documented failure to correct his deficiencies, that his command would have issued marks in accordance with policy and regulation which, based on his well-documented deficiencies in performance, would have resulted in a proficiency mark below 4.0 and, therefore, below that required for an "Honorable" discharge. As a result, the Board determined significant negative aspects of his service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Accordingly, the Board concluded that there is insufficient evidence Petitioner's discharge under honorable conditions was issued either erroneously or unjustly.

Further, the Board found that Petitioner's reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed in the recommended corrective action.

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 31 May 2002, he was discharged under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1," and no other changes.

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

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

corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

4/12/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]