



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

[REDACTED]
Docket No. 8553-22

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo of 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

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

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.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 March 2023, and, pursuant to its regulations, determined the partial corrective action indicated below should be taken. Documentary material considered by the Board consisted of the Petitioner's application, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies to include references (b) and (c). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not 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.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. During Petitioner's enlistment processing he disclosed previous use of marijuana, alcohol abuse, and other infractions to include reckless driving and public intoxication and was granted an enlistment waiver.

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d. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 11 December 1989

e. On 11 September 1995, Petitioner completed the Level II alcohol rehabilitation program.

f. Petitioner reenlisted on 10 November 1995, after over five years of honorable service.

g. On 18 February 1998, correspondence from Headquarters, [REDACTED] capture Petitioner was admitted to the [REDACTED], completed Level III rehabilitation, and was diagnosed with Alcohol Dependence early full remission, Alcoholic Macrocytosis, and had poor recovery support, marital stress. It was recommended that Petitioner abstain from all non-prescribed mood-altering drugs; follow-up with the substance abuse clinical counselor (SAAC), and seek marriage counseling at [REDACTED].

h. On 25 February 1998, Petitioner was notified of his administrative separation processing by reason of misconduct due to drug abuse, specifically his admission of using ecstasy, cocaine, and methamphetamines. He elected his right to consult with military counsel and to have his case heard before an administrative discharge board (ADB). On 31 March 1998, an ADB was held.

i. On 6 April 1998, the separation authority directed Petitioner be discharged with an other than honorable (OTH) characterization of service by reason of misconduct due to drug abuse and that he be administratively reduced to LCPL/E-3 upon discharge. On 27 April 1998, he was so discharged.

j. Based on Petitioner's assertion that he was suffering from undiagnosed symptoms of bipolar during military service, which might have mitigated his discharge character of service, a qualified mental health professional reviewed his request for correction to his record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. His substance use diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Unfortunately, he has provided no medical evidence to support his claims of a diagnosis of bipolar disorder. In service, he was specifically evaluated for this condition and the provider found that he did not meet criteria for the diagnosis. His in-service misconduct appears to be consistent with his substance use disorders, which were present before military service, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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.

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The AO concluded, "based on the available evidence, it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition, other than substance use disorder."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial favorable action.

The Board reviewed Petitioner's application under the guidance provided in references (a) through (c). Specific to Petitioner's request that his discharge be upgraded, the Board determined relief is not warranted. The Board concluded that there was no convincing evidence Petitioner suffered from any type of mental health condition while on active duty, or that such mental health condition was related to or mitigated the misconduct that formed the basis for his discharge. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service other than substance use disorders, which were present before military service, rather than evidence of another mental health condition incurred in or exacerbated by military service. Lastly, the Board noted Petitioner did not submit any clinical documentation or treatment records to support his mental health claims nor any documentation to support clemency.

The Board did note an administrative error on his Certificate of Release or Discharge from Active Duty (DD Form 214) in that it did not reflect his honorable service during his first enlistment.

RECOMMENDATION:

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

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) indicating his continuous honorable service for the period of 11 December 1989 to 9 November 1995.

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.

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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 Regulation, 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.

3/30/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]