



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

█
Docket No. 8797-22
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 █

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 attachments
(2) Case summary

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 his discharge be upgraded to an "Honorable" characterization of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 27 March 2023, and, pursuant to its regulations, determined that 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 including references (b) and (e). In addition, the Board considered 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 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. Petitioner enlisted in the U.S. Marine Corps Reserve on 19 May 1972 and completed a period of Honorable service on 16 November 1972. On 1 February 1973, he enlisted in the USMC active component and began a second period of service. On 12 December 1973,

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Petitioner was found guilty at a special court-martial (SPCM) of dereliction of duty, disrespect, and communicating a threat. He was sentenced to restriction for 60 days, hard labor without confinement for 60 (to run concurrent with his restriction), forfeiture of \$100.00 pay per month for two (2) months, and reduction in rank to E-1. On 23 February 1974, Petitioner was found guilty at a second SPCM of assault and communicating a threat. He was sentenced to confinement at hard labor for three (3) months and forfeiture of \$200.00 pay per month for three (3) months.

d. On 28 February 1974, Petitioner was notified of his pending administrative separation (ADSEP) by reason of unfitness due to his frequent involvement of a discreditable nature with military authorities. Petitioner refused to sign the administrative separation notification and acknowledged that he did not wish to be represented by any military lawyer, even in a capacity as an associate counsel to a civilian attorney, but he did wish to be represented by civilian counsel.

e. On 10 April 1974, Petitioner's CO recommended to the separation authority that he be discharged with an OTH characterization of service due to unfitness.

f. On 12 April 1974, Petitioner again asserted that he did not want to be represented by legal counsel.

g. On 14 May 1974, an administrative discharge board was convened. During said hearing, Petitioner made an unsworn statement. Correspondence from the senior member of the board specifies Petitioner was advised of and understood his rights, including the right to remain silent, and was questioned not on his unsworn testimony but upon his educational background adding, "the statement concerning him fulfilling his military obligation and his rehabilitation were offered voluntarily and not in response to a question by the board, nor was he questioned upon these statements."

h. On 12 July 1974, correspondence from the staff judge advocate (SJA) found Petitioner's case to be sufficient in law and fact.

i. On 30 July 1974, the separation authority directed Petitioner be discharged with an OTH for unfitness. On 7 August 1974, Petitioner was so discharged.

j. Petitioner contends he incurred PTSD symptoms during military service as a result of racism, which was not addressed when he reported it to his chain of command. Specifically, he entered boot camp not long after the Civil Rights Act of 1964 was passed and racial tensions were high. He states he was the victim of racism and bullying and, whenever he defended himself, he was the only person held accountable and was viewed as having a "radical attitude" and of being "rebellious." This caused him to lack trust in others, specifically Caucasians, to include counsel. He again assert there was an issue with racism in his unit that is not reflective of his character but a reaction to his circumstances.

k. For purposes of clemency consideration, Petitioner provided documentation in the form of a statement and medical records.

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l. In connection with Petitioner's assertion that he incurred PTSD during military service, which might have mitigated his discharge character of service, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health professional who reviewed the Petitioner's request for correction to his record and provided the Board with an AO. 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. Post-service, he has received a diagnosis of PTSD from a civilian provider that is temporally remote to his military service and has been attributed to military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service, or provide a nexus with his misconduct, as he claims that he is innocent of the charges, which were racially motivated. 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 a diagnosis of PTSD from a civilian provider that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD.

m. Petitioner submitted a personal statement in response to the AO that provided additional clarifying information regarding the circumstances of his case.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board notes Petitioner's misconduct and does not condone it; however, the Board concurred with the AO that, even though his misconduct cannot be attributed to a mental health condition, there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. As a result, purely as a matter of clemency, the Board concluded it was in the interests of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions).

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 member'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

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higher was appropriate. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 7 August 1974, indicating the character of service as "General (Under Honorable Conditions)."

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 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.

4/10/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]