



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

█  
Docket No. 8965-22

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) 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) USECDEF Memo of 25 Aug 2017 (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 16 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 26 April 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). In addition, the Board considered enclosure (3), 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 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 29 November 1999. Petitioner subsequently completed this enlistment with an Honorable characterization of service, on 1 October 2003, and immediately reenlisted.

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d. On 30 July 2004, Petitioner issued an administrative remarks (Page 11) counseling concerning deficiencies in his performance and conduct. Specifically, violation of the Uniform Code of Military Justice, Article 86. Petitioner advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation.

e. On 16 September 2004, Navy Drug Laboratory, Jacksonville FL reported Petitioner's urine sample tested positive for THC (marijuana).

f. On 18 March 2005, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

g. On 11 April 2005, Petitioner's commanding officer (CO) recommended to the separation authority (SA) that Petitioner be administratively discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service.

h. On 11 May 2005, Petitioner was convicted by a summary court-martial (SCM) of wrongful use of marijuana.

i. Ultimately, the SA directed Petitioner's administrative discharge from the Marine Corps with an OTH character of service. On 13 July 2005. Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to drug abuse.

j. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 20 November 2007, based on their determination that Petitioner's discharge was proper as issued.

k. Petitioner contends that he has been diagnosed with a serious mental health condition that adversely impacted his judgement which ultimately resulted in a mistake that led to his discharge. For purposes of clemency and equity consideration, the Board noted Petitioner provided advocacy letters describing his character and a health care provider letter.

l. 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:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His in-service alcohol use and anxiety disorder 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. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior conducted following alcohol consumption. Post-service, a civilian provider has diagnosed PTSD that is temporally remote to military service and attributed to military service. It is possible that symptoms of anxiety identified

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during military service have been re-conceptualized as symptoms of PTSD with the passage of time and increased understanding. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given pre-service behavior. Additional records (e.g., active duty or 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 in-service evidence of a diagnosis of a mental health condition (anxiety disorder). There is insufficient evidence to attribute his misconduct *may be attributed [sic]* to PTSD or another 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 OTH characterization of service discharge for separation for misconduct due to drug abuse. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post-service evidence of a diagnosis of PTSD from a civilian provider that may be attributed to military service, and there is in-service evidence of a diagnosis of a mental health condition (anxiety disorder).

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct, the Board 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 may have had upon his misconduct. Based upon this review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his mental health condition outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his 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 service 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 outweighed the positive aspects of his military record even under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

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Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to Secretarial Authority in the interests of justice. However, the Board concluded Petitioner's reentry code should remain unchanged based on his unsuitability for further military service. 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 recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 13 July 2005, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF1," and the separation authority was "MARCORSEPMAN 6214."

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.

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.

5/8/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]