



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

█
Docket No. 9016-22
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 with attachments
(2) Case summary
(3) Advisory Opinion of 20 March 2023

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 General (Under Honorable Conditions)(GEN) characterization of service.

2. The Board, consisting of █ █ █ █ and █ █ reviewed Petitioner's allegations of error and injustice on 3 April 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). The Board also considered enclosure (3), an advisory opinion from a qualified mental health provider.

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 (USMC) and began a period of active duty on 18 February 1969. From 27 August 1969 to 24 November 1969, Petitioner participated in Counter Insurgency Operations in █, Republic of Vietnam. On 11 May 1970,

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

Petitioner received his first nonjudicial punishment (NJP) for falling out of inspection and needing a haircut. On 12 July 1970, Petitioner received a second NJP for disobeying a written order. On 28 October 1970, Petitioner received a third NJP for a period of unauthorized absence (UA). Petitioner subsequently incurred two additional periods of UA totaling 52 days and ending in his surrender. On 24 March 1971, Petitioner requested a good of the service discharge in lieu of facing trial by court martial for the aforementioned UAs and five specification of breaking restriction. On 25 March 1971, a staff judge advocate's review of Petitioner's case found the proceedings to be sufficient in law and fact. On 30 March 1971, the separation authority directed Petitioner be discharged for the good of the service with an Other Than Honorable (OTH) characterization of service. On 6 April 1971, Petitioner was so discharged.

d. Petitioner contends he was diagnosed with PTSD due to his service in Vietnam. He added that his problems started post-deployment and he was provided no help, and (2) since his discharge he has been an outstanding member of society and his community.

e. For purposes of clemency consideration, Petitioner provided documentation in the form of character letters, official military personnel file (OMPF) documents and department of veterans affairs (VA) documents for consideration.

f. In connection with Petitioner's assertions that he incurred PTSD and other mental health concerns (MHCs) during military service, which might have mitigated the circumstances of his discharge, the Board requested and reviewed enclosure (3), the AO. The AO was considered favorable to Petitioner and 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. Post-service, the VA has diagnosed PTSD that has been attributed to military service. It is plausible that his UA and disobedience could be attributed to unrecognized symptoms of irritability and avoidance associated with PTSD.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence to attribute his misconduct to symptoms of unrecognized PTSD.

g. Petitioner was previously denied relief by the Naval Discharge Review Board (NDRB) on 20 March 1974.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants full relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references (b) through (e), and after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization

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

should be upgraded to GEN. In making this finding, the Board concurred with enclosure (3) that there is post-service evidence to attribute Petitioner's misconduct to symptoms of unrecognized PTSD.

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 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 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 higher was appropriate. Further, the Board found no basis to change Petitioner's narrative reason for separation, separation code, or reentry code. 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 indicating, for the period ending 6 April 1971, that his character of service was "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.

4/19/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]