



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

█  
Docket No. 9189-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
█ 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) 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 that his naval record be corrected to upgrade his characterization of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 21 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider. Although the Petitioner was provided an opportunity to provide an AO rebuttal for consideration, 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.

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c. The Petitioner enlisted in the U.S. Marine Corps and began a period of active service on 24 August 1967. Petitioner's pre-enlistment physical examination, on 18 August 1967, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. As a member of the Third Marine Division (REIN), between 2 March 1968 and 23 October 1968, Petitioner provided direct support to multiple operations conducted against enemy forces in Vietnam. On 20 December 1968, Petitioner was convicted at a Summary Court-Martial (SCM) for two separate specifications of insubordinate conduct and for wearing an unauthorized uniform. Petitioner was sentenced to forfeitures of pay and hard labor without confinement for thirty days. The Convening Authority (CA) approved the SCM sentence as adjudged.

e. On 24 December 1968, Petitioner received non-judicial punishment (NJP) for failing to go to his appointed place of duty. Petitioner did not appeal his NJP. On 29 December 1968, Petitioner commenced an unauthorized absence (UA) that terminated after forty-two (42) days with his arrest on 9 February 1969.

f. On 13 March 1969, Petitioner was convicted at a Special Court-Martial (SPCM) for his 42-day UA, a second UA specification, and two separate specifications of insubordinate conduct. Petitioner was sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement at hard labor for two months. On 23 April 1969, the CA approved the SPCM sentence as adjudged. On 16 June 1969, Petitioner's received NJP for UA. Petitioner did not appeal his NJP.

g. On 1 July 1969, Petitioner's separation physical examination did not note any psychiatric or neurologic conditions or symptoms. Ultimately, on 7 July 1969, Petitioner was discharged from the Marine Corps at the convenience of the government with a General (Under Honorable Conditions) (GEN) characterization of service with assigned an RE-4 reentry code.

h. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was approximately 3.69. Marine Corps regulations in place at the time of his discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service

i. Petitioner requested relief in the form of a discharge upgrade. In short, Petitioner stated he incurred Post Traumatic Stress Disorder (PTSD) on active duty. The Petitioner submitted documentation from the VA noting he was granted a service-connection for PTSD with a 100% disability rating, effective 27 September 2019.

j. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 1 March 2023. The Ph.D. 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

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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, the VA has granted service connection for PTSD that is temporally remote from his military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. While it is possible UA, irritability, and disobedience could be attributed to unrecognized symptoms of PTSD, it is difficult to attribute his extended UA to PTSD avoidance. 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 Ph.D. 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 insufficient evidence all of his misconduct may be attributed to PTSD."

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board determined that Petitioner's request warrants relief. The Board concluded under the unique factual circumstances of this case that no useful purpose is served by continuing to characterize the Petitioner's service as having been under GEN conditions, and that a discharge upgrade to Honorable was appropriate at this time.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. While the Board does not condone the Petitioner's cumulative misconduct, the Board believed that Petitioner's service-connected PTSD mitigated the misconduct used to characterize his discharge. The Board concluded that the Petitioner's PTSD-related condition and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct.

The Board noted that Petitioner's overall active duty trait average in conduct did not meet the Marine Corps' recommended minimum trait average in such category for a fully honorable characterization of service. Notwithstanding, the Board believed that flawless service was not required for an Honorable discharge. In light of the Wilkie Memo, and while in no way excusing or condoning the Petitioner's pattern of serious misconduct, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of extraordinary leniency and clemency, that the Petitioner merits a discharge upgrade to Honorable.

The Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board determined that the record clearly reflected Petitioner's misconduct was intentional and willful and indicated he was unfit for further service. The Board also noted that the evidence of record did not demonstrate that he was

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not mentally responsible for his conduct or should not otherwise be held accountable for his actions. Accordingly, the Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "Honorable."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new Honorable Discharge Certificate.

That 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.

5/8/2023

[REDACTED]