



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

██████████
Docket No. 9342-22
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) USD Memo, 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Advisory opinion by Ph.D., Licensed Clinical Psychologist, 24 March 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 his discharge be upgraded from “other than honorable” to “general under honorable conditions” characterization of service.

2. The Board consisting of ██████████, ██████████, and ██████████ reviewed Petitioner’s allegations of error and injustice on 8 May 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 (c). Additionally, the Board also considered the advisory opinion (AO) by a Ph.D., Licensed Clinical Psychologist, enclosure (3), which was previously provided to Petitioner. Petitioner was afforded an opportunity to submit a rebuttal, but did not do so.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo. The Board, having reviewed all the facts of record pertaining to Petitioner’s allegations of error and injustice, finds as follows:

a. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 24 October 1973. On 15 November 1973, Petitioner received his first nonjudicial punishment (NJP) for disobeying a regulation to smoke only when authorized. On 13 February 1974, Petitioner received a second NJP for two (2) specifications of disobeying a lawful order issued by a noncommissioned officer (NCO), for disrespect in language towards an NCO, and for the

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wrongful appropriation of money from a recruit. On 19 February 1974, a request for psychiatric evaluation located in Petitioner's official military personnel file documents he did not present an incapacitation physical or mental disability. On 20 February 1974, Petitioner was notified of his pending administrative separation for misconduct by reason of frequent involvement, at which time he waived his right to consult with military counsel and to have his case heard before an administrative discharge board. On this date his Commanding Officer recommended to the separation authority that he be discharged with an undesirable discharge for his frequent involvement adding, "[Petitioner] has been found guilty at office hours of violations of Articles 91 (3 specifications), 92, and 121 of UCMJ (Uniform Code of Military Justice). This recruit has had a full tour of MOP (motivational platoon), has failed X-1 (test 1) with a score of 56, went non-qual on the rifle range, and has been to sick call in excess of 18 times. [Petitioner] is constantly causing problems in his training platoons due to his complete lack of self-discipline. [Petitioner] has a GCT of 64, however, it is felt that this is not his main problem and could be overcome if this recruit so desired. [Petitioner] is completely unmotivated towards becoming a Marine and just wants to go home. This recruit is not suitable for retention any longer and based upon his record in training it is the opinion of this command that [Petitioner] should receive an Undesirable Discharge for Frequent Involvement." Additionally on this date, a staff judge advocate's review of Petitioner's case found the proceedings to be sufficient in law and fact. On 28 February 1974, the separation authority directed Petitioner be discharged with an undesirable discharge due to unfitness as evidenced by his frequent involvement and on 8 March 1974 Petitioner was so discharged.

b. Petitioner contends he incurred mental health concerns (MHC) during military service and asserts, (1) once he transferred from his ██████████ unit he was lost and did not understand anything so he "stole \$6.00 to get out of the military" and (2) "he needs his VA (department of Veterans Affairs) and medical benefits.

c. For purposes of clemency consideration, Petitioner provided medical documents for consideration.

d. In connection with Petitioner's assertions that he incurred MHC during military service, which might have mitigated the circumstances of his discharge, the Board requested, and reviewed, an 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:

During military service, the Petitioner was apparently evaluated and there was no evidence of a diagnosable mental health condition. Post-service, the Petitioner reported mental health symptoms to a civilian provider that are temporally remote to his military service, but the provider opined may be attributed to military service. However, the civilian provider did not list a formal mental health diagnosis and there is insufficient evidence of a mental health diagnosis during military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. 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, “[b]ased 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 to attribute his misconduct to a mental health condition”.

e. Petitioner was previously denied relief by this board on 5 March 2008 and 10 April 2019.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner’s request warrants 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 other than honorable discharge. However, in light of reference (c), 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 should be upgraded to “general (under honorable conditions).”

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating the character of service as “general (under honorable conditions).”

That no further changes be made to Petitioner’s naval record.

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.

5/24/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]