



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

█
Docket No. 0691-23
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 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
(3) Advisory opinion of 3 August 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 that his naval record be corrected to upgrade his characterization of service from Other than Honorable (OTH) to Honorable, and change his narrative reason for separation, separation authority, separation code, and reentry code.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 2 October 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). Additionally, the Board also considered enclosure (3), an advisory opinion (AO) furnished by a qualified mental health provider. 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.

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c. The Petitioner enlisted in the Marine Corps and began a period of active service on 18 July 1980.

d. On 16 September 1980, Petitioner received medical treatment for a “laceration and crush injury to...fourth finger R [right] hand.” The medical record indicates that Petitioner had fallen while climbing hills at [REDACTED] during training.

e. On 6 April 1981, Petitioner was convicted by civilian authorities for fighting in a public place.

f. On 21 August 1981, Petitioner’s command notified him that they initiated administrative separation (ADSEP) processing by reason of misconduct, due to his frequent involvement of discreditable nature with military authorities. He elected his right to consult to counsel and his right to present a case at ADSEP board.

g. Before the ADSEP board could convene, on 1 October 1981, Petitioner was found guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 92, for four specifications of disobedience for possession of marijuana, an open container of alcohol in his vehicle, and driving on base while his driving privileges were revoked, Article 86, four specifications of unauthorized absence (UA) from formation, and Article 111, for operating a vehicle while drunk. He was sentenced to 45 days confinement at hard labor, forfeitures of pay, and a reduction to paygrade E-1.

h. On 14 January 1982, the ADSEP Board convened, and found that the charges against Petitioner indicated “prejudicial intent,” and recommended that he be retained in the Marine Corps because, even though he was subsequently convicted by SPCM, his record contained no required counseling entries. He was also counseled with regard to the improper wearing of his uniform and warned that further violations would result in disciplinary action.

i. From January 1982 to December 1982, Petitioner was formally counseled via Page 11 Administrative Counseling warnings concerning deficiencies in his performance and conduct, specifically for his tardiness, poor attitude, and lack of interest in obeying orders and regulations. He was put on notice that further disciplinary action would be grounds for administrative separation. Petitioner was provided the opportunity to make a statement and elected not to do so.

j. On 20 January 1982, Petitioner was found guilty at non-judicial punishment (NJP) of violating UCMJ Article 86, for two specifications of UA from formation and clean up, and Article 91, for disobedience by not getting a haircut or reporting as ordered. Petitioner did not appeal this NJP.

k. On 27 January 1982, Petitioner was found guilty at his second NJP of violating UCMJ Article 91, for willfully disobeying an order by failing to report to a location. Petitioner did not appeal this NJP.

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l. On 18 February 1982, Petitioner was found guilty at his third NJP of violating UCMJ Article 86, for UA from his place of duty and breaking restriction. Petitioner did not appeal this NJP.

m. On 4 May 1982, Petitioner was found guilty at his fourth NJP of violating UCMJ Article 86, for three specifications of UA from his place of duty. Petitioner did not appeal this NJP.

n. Prior to his discharge, Petitioner received drug and alcohol screening and was deemed not to be drug or alcohol dependent.

o. In accordance with MARCORSEPMAN, para. 6211, Petitioner requested a separation for the good of the service in lieu of trial by court martial. Petitioner's commanding officer accepted his request and, on 20 May 1983, he was discharged from the Marine Corps by reason of "Conduct triable by Court Martial (request for good of the service)" with an OTH characterization of service and an "RE-4" reenlistment code.

p. Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health conditions during military service, and that his conditions were a causative factor for the behavior underlying his OTH discharge. Petitioner explains that he incurred depression during childhood following abuse and neglect, which worsened after enlistment when he was ineligible for his chosen occupation and was harassed during boot camp. He asserts that he incurred PTSD after being pushed down a mountain by his drill instructor, resulting in an injury to his finger. He was threatened not to reported the assault and began to self-medicate with marijuana and alcohol to deal with the symptoms and engaged in other misconduct. In support of his request, he submitted a January 2007 witness statement regarding the incident involving his drill instructor. He provided a July 2012 letter from his civilian psychiatrist describing treatment since 2008 for Schizoaffective disorder – bipolar type "manifest by a delusion in which he fears the possibility of his former drill instructor returning to do him harm or kill him." The psychiatrist noted that PTSD was to be ruled out "because it is not known by this clinician if in fact there was an overtly traumatic event that occurred during his military service." He also submitted evidence of Department of Veterans Affairs (VA) determination of service connection for a finger injury and a July 2007 orthopedic evaluation of his finger listing diagnoses of depression and schizoaffective disorder.

q. In connection with Petitioner's assertion of mental health issues, the Board requested and reviewed enclosure (3), provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records. 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. Post-service, he has provided medical evidence of a mental health condition that has been attributed to military service. There is insufficient evidence of a diagnosis of PTSD, as his medical provider noted that additional information was required to rule out the

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presence of PTSD. It is possible that the Petitioner's mental health concerns emerged during military service and his substance use, UA, and disobedience could be attributed to unrecognized mental health symptoms. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen then opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from a civilian provider of a mental health condition that may be attributed to military service. There is post-service evidence to attribute his misconduct to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. While the Board noted Petitioner's misconduct and does not condone his actions, it concluded that his mental health concerns sufficiently mitigated his misconduct to merit some level of relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence offset the severity of the misconduct. In making this finding, the Board substantially concurred with AO that it is possible that the Petitioner's mental health concerns emerged during military service and that his substance use, UA, and disobedience could be attributed to unrecognized mental health symptoms. Further, the Board noted that there is post-service evidence of a mental health condition that has been attributed to military service. Accordingly, the Board concluded that a re-characterization of Petition's service to General (Under Honorable Conditions) (GEN) is appropriate and warranted in this case.

Notwithstanding the recommended corrective action, the Board was not willing to grant a full upgrade to an Honorable (HON) discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an HON discharge even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board believed that, even though flawless service is not required for an HON discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions while on active duty. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a GEN characterization of service and no higher.

Additionally, the Board did not find an error or injustice with Petitioner's narrative reason for separation, separation code, separation authority, or reentry code. The Board concluded the Petitioner was assigned the correct codes based on the totality of the circumstances, and that such separation designations were proper and in compliance with all Department of the Navy and Marine Core directives and policy at the time of his discharge. Ultimately, the Board determined

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any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 20 May 1983, his character of service was "General (Under Honorable Conditions)."

That no further changes be made to the 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.

10/6/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]