



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

█
Docket No. 0881-23
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 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

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.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 18 September 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).

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 7 July 1981. While in basic electrician's school, two of his fingers were partially amputated during a generator incident. On 12 February 1982, Petitioner commenced a period of unauthorized absence (UA) which lasted 25 days and ended in his surrender. On 15 March 1982, he was found guilty at a summary court-martial (SCM) of the aforementioned UA and sentenced to confinement at hard labor for one month and to forfeit \$412.00 pay per month for one month.

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On 9 April 1982, a physical evaluation board found Petitioner fit for duty. On 14 May 1982, Petitioner commenced another period of UA which lasted 46 days. Petitioner subsequently requested a good of the service discharge which was approved. He was discharged with an Other Than Honorable (OTH) characterization of service on 30 July 1982.

c. Petitioner states he incurred mental health concerns during military service and contends . that: (1) the generator incident left him feeling self-conscious, (2) he was made fun of by family, peers, and his injuries would cause his spouse to cringe when he attempted to touch her, (3) his spouse eventually became unfaithful, (4) his performance began to deteriorate and he had difficulty adjusting to the limited use of his hand, (5) he turned to drugs to cope with his pain, (6) he spent lots of time in and out of jail, (7) had he known what type of discharge he was receiving and that it would not allow him to obtain benefits he would have never accepted his discharge, and (8) a discharge upgrade would allow him to receive service connected disability payments.

d. For purposes of clemency and equity consideration, Petitioner provided copies of his DD Form 214 (Certificate of Release or Discharge from Active Duty), DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), a statement, and Department of Veterans Affairs (DVA) center correspondence.

e. Based on Petitioner's assertions that he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service, a qualified mental health professional reviewed his request for correction of his record and provided the Board with an AO. 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. In a letter that he wrote to the Commanding General on July 7, 1982 he indicated that he had numerous family problems and hardships back home which is why he went UA and requested discharge. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., active duty medical records containing the events described by the Petitioner, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "based on the available evidence, it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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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. However, in light of references (b) through (e), 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).

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 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 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. Additionally, the Board concluded Petitioner's narrative reason for separation, separation code, and reentry code remain appropriate in light of his record of misconduct and unsuitability for further military service. Ultimately, the Board determined 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, for the period ending 30 July 1982, indicating the character of service as "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.

10/2/2023

[REDACTED]
Executive Director
Signed by [REDACTED]