



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

██████████
Docket No. 1159-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████ 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) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 24 Aug 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 for an upgrade of his characterization of service.

2. The Board, consisting of ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 13 September 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional, that was considered favorable toward Petitioner.

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 regulation 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 and began a period of active duty on 14 May 2002. On 21 October 2003, he received non-judicial punishment (NJP) for wrongful use of cocaine.

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d. As result, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct drug abuse. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

f. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 11 December 2003, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct drug abuse.

g. Petitioner contends the following injustices warranting relief:

(1) At the time of his discharge, he was suffering from untreated PTSD and mental health condition (MHC);

(2) He states he has documented PTSD and depression diagnosis from a Department of Veterans Affairs Readjustment Counseling Therapist; and

(3) He contends the Marine Corps did not have a drug policy when he was discharged; and

(4) He served during the Iraq and Afghanistan era and has a diagnosis of PTSD attributable to his service.

h. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement, five advocacy letters, health care documents, evidence of combat service and his official military record.

i. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

The Petitioner submitted outpatient records from the [REDACTED] Vet Center where he received counseling for PTSD from 2017-2019. He also submitted a letter from his licensed social worker whom he saw at the Vet Center who provided a comprehensive letter of his diagnosis, history and symptoms. He provided 5 character references and post-service accomplishments as part of his evidence. The therapist's account from treatment at the Vet Center is consistent with veteran's anecdote, such that the veteran began drinking and experimenting with cocaine upon return from his deployment. Personal statement, buddy letters and therapy records do indicate a highly kinetic deployment to Iraq during the invasion of Baghdad. It is not unreasonable that Petitioner used alcohol and cocaine to self-medicate in response to PTSD symptoms.

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The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition that may have existed during military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his MHC, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO that there is post-service evidence from the civilian providers of a mental health condition that may have been experienced during military service, and there is post-service evidence to attribute his misconduct to a mental health condition.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. After thorough review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his MHC outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to Honorable (HON).

Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code should be changed to reflect a Secretarial Authority discharge.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 11 December 2003, his "Honorable" discharge was issued under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1," and an "RE-1A" reentry code.

That no further correction action be taken on Petitioner's naval record.

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That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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

