



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

█
Docket No. 1539-23
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) PDUUSD 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 31 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 (HON) in accordance with references (b) through (e). Enclosures (1) and (2) apply.

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. 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.

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 United States Marine Corps Reserves and had three periods of active honorable service: from 19 February 2003 to 25 July 2003; from 3 June 2005 to 16 November 2005; and from 1 December 2005 to 30 November 2006.

d. Petitioner was mobilized two times in support of Operation Iraqi Freedom. From 19 July 2005 to 28 September 2005, Petitioner was mobilized to [REDACTED] and [REDACTED]. From 23 March 2006 to 12 October 2006, he was mobilized to [REDACTED] where he was awarded the Combat Action Ribbon.

e. On 20 December 2007, Petitioner tested positive on a routine urinalysis.

f. On 5 January 2008, Petitioner was notified that his command initiated the administrative separation (ADSEP) process due to misconduct related to his drug abuse. He waived right to consult counsel or present case at ADSEP board, but elected to submit a written statement in his defense.

g. In March 2008, Petitioner was discharged from the Marine Corps Reserves for misconduct due to drug abuse with an OTH characterization of service and assigned an RE-4 reenlistment code.

h. Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) as a result of his repeated combat service, which led to self-medicating with marijuana and ultimately his OTH discharge. Petitioner describes his combat trauma and his struggle to assimilate back to normal life post-deployment. He asserts that he has found healthier ways to cope with his trauma and requests consideration of his upgrade request.

i. In connection with Petitioner's assertion that his mental health conditions mitigate the circumstances that led to his discharge character of service, the Board requested and reviewed an Advisory Opinion (AO) provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued enclosure (3). The AO stated in pertinent part:

The Petitioner submitted VA Form 21-0781 whereby he provided extensive details of his combat deployment pursuant to applying for disability and compensation benefits. His notes reference a highly kinetic and dangerous deployment with potentially trauma-inducing events. He also submitted VA Summary of benefits from 2023 which indicate 80% service connection, although the document does not specify what diagnoses/conditions are service-connected. The veteran admitted to using marijuana "approximately 25 times" pre-service during his enlistment application. Although there is no evidence that the Petitioner was diagnosed with a mental health condition or PTSD while in military service, it is possible that he did use marijuana to quell symptoms of PTSD as he was already familiar with the effects thereof.

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The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition (PTSD).”

CONCLUSION:

After careful review and consideration of all of the evidence of record, the Board determined that relief is warranted in the form of upgrading Petitioner’s characterization of service from OTH conditions to HON.

Because Petitioner based his claim for relief upon mental health conditions, his application was reviewed in accordance with the guidance of references (b) through (e). Accordingly, the Board applied liberal consideration to Petitioner’s contention. In this regard, the Board concluded that Petitioner appears to have suffered from undiagnosed mental health conditions during his military service, which is related to his post-service diagnoses of PTSD. The Board felt that the Petitioner submitted sufficient evidence to support his contention that his misconduct and subsequent mental health conditions were directly related to his combat exposure during military service. The Board felt that Petitioner’s statement was sufficiently detailed and was further supported by medical treatment notes and psychiatric research. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner’s diagnosed service connected mental health condition was a possible causative factor for the misconduct underlying his discharge and therefore mitigated his conduct. After viewing the nexus between Petitioner’s trauma and his subsequent misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner’s service as having been under OTH conditions, and that a discharge upgrade to HON is appropriate.

Notwithstanding the above corrective action, the Board concluded that Petitioner’s narrative reason for separation, separation authority, separation code, and reenlistment code should remain unchanged. Although the Board found that the mitigating information warrants a characterization upgrade, the fact that the underlying basis for separation was misconduct remains accurate and in compliance with Navy and Marine Corps regulations. Ultimately, the Board concluded 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 26 March 2008, his character of service was “Honorable.”

That no further changes be made to the record.

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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.

9/27/2023

[REDACTED]