



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

█  
Docket No. 1773-23  
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, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)  
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (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 that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 10 March 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, and applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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.

c. The Petitioner enlisted in the U.S. Marine Corps and began a period of active service on 9 September 1966. Petitioner's pre-enlistment physical, on 24 August 1966, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 20 February 1967, Petitioner received non-judicial punishment (NJP) for a brief unauthorized absence (UA). Petitioner did not appeal his NJP. On 20 November 1967, Petitioner received NJP for a one-day UA. Petitioner did not appeal his NJP.

e. On 15 April 1968, Petitioner commenced a period of UA that terminated after eight (8) days on 23 April 1968. On 25 April 1968 Petitioner received NJP for his eight-day UA. Petitioner did not appeal his NJP.

f. Between July and September 1968, the Petitioner participated in multiple combat operations against hostile forces in [REDACTED]. In September 1968 Petitioner received a shrapnel wound to his left elbow while serving in [REDACTED]. Petitioner would later receive the Purple Heart Medal for his wound.

g. On 6 January 1969, Petitioner commenced a period of UA that terminated after nine (9) days on 15 January 1969. On 16 January 1969, Petitioner received NJP for his nine-day UA. Petitioner did not appeal his NJP. On 5 February 1969, Petitioner received NJP for UA and for failing to obey a lawful order. Petitioner did not appeal his NJP.

h. On 24 February 1969, Petitioner commenced a period of UA that terminated after forty-nine (49) days on 14 April 1969. On 1 May 1969, Petitioner was convicted at a Summary Court-Martial (SCM) for his long-term UA. Petitioner was sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for thirty days, and forfeitures of pay. On 5 May 1969, the Convening Authority approved the SCM sentence, but suspended any confinement in excess of twenty days.

i. However, on 9 June 1969, Petitioner commenced a period of UA that terminated after eighteen (18) days on 27 June 1969. On 9 July 1969, the suspended portion of the SCM sentence was vacated and enforced and Petitioner was placed in confinement for nine more days. Following his release from confinement, on 18 July 1969, Petitioner commenced another UA

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when he broke restriction. Petitioner's UA terminated after thirty (30) days with his surrender to military authorities on 17 August 1969.

j. On 11 September 1969, Petitioner subsequently submitted a voluntary written request for an administrative undesirable discharge for the good of the service to avoid trial by court-martial for his two long-term UAs (18 days and 30 days, respectively). Petitioner consulted with counsel prior to submitting his request. As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, Petitioner was discharged from the Marine Corps with an Other Than Honorable conditions (OTH) characterization of service in lieu of a trial by court-martial and assigned an RE-4 reentry code.

k. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was approximately 3.68 in conduct as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge recommended a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

l. In short, Petitioner contended that his discharge was an injustice because his misconduct was a direct result of service-connected mental illnesses. Petitioner argued, in part, that his then-undiagnosed mental health conditions were causative factors for the behavior underlying his separation and OTH discharge. Petitioner further argued that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his OTH discharge and upgrade his characterization of service, and that his decorated combat service and his subsequent National Guard service also weighed in favor of a discharge upgrade.

m. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 8 November 2022. The Ph.D. 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 received a diagnosis of PTSD that has been attributed to his military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given his history of running away prior to entry into service and UA before combat deployment. Additional records (e.g., post-service mental health records describing the Petitioner's symptoms and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD avoidance."

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n. Following a review of the Petitioner's AO rebuttal submission, the Ph.D. did not change their original AO. The Ph.D. noted that it was reasonable PTSD symptoms recognized by the VA became interfering after a delayed onset, thus resulting in a diagnosis temporally remote to Petitioner's active duty service.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the Petitioner's cumulative misconduct including his multiple UAs, the Board felt that Petitioner's combat-related PTSD experiences partially mitigated the misconduct used to characterize his discharge. The Board concluded that the Petitioner's PTSD-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, 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 "General (Under Honorable Conditions)" (GEN) is appropriate at this time.

However, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board also noted that Petitioner's pattern of misconduct began well in advance of his combat deployment. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge and no higher was appropriate. As a result, in light of the Wilkie Memo, and while not necessarily excusing or endorsing Petitioner's misconduct, the Board 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 discharge upgrade to GEN and no higher.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's original "RE-4" reentry/reenlistment code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board concluded that 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.

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Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty reflecting he was discharged from the U.S. Marine Corps in 1969 with a "General (Under Honorable Conditions)" characterization of service, with a narrative reason for separation of "Secretarial Authority," and corresponding separation authority and separation/SPD code entries.

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.

3/21/2023

[REDACTED]  
Executive Director

Signed by: [REDACTED]