



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

██████████
Docket No. 2105-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████████ 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 26 Sep 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 8 November 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. Although Petitioner was afforded 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 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 17 September 1968. On 26 June 1969, Petitioner deployed to Vietnam to participate in

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Operations against [REDACTED]
[REDACTED].

d. Petitioner started a period of unauthorized absence on 17 July 1970. On 20 January 1975, he agreed to participate in the Presidential Clemency Program and report to Marine Corps Clemency Processing Unit. After reporting to the unit, he requested to be discharged for good of the service. Petitioner's request was ultimately approved and he was discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service on 29 January 1975.

e. Petitioner contends the following injustices warranting relief:

(1) After returning from [REDACTED] he did not receive any medical or psychiatric treatment when he returned from [REDACTED]; and

(2) He states after receiving treatment he was diagnosed with PTSD.

f. 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 claims that he has been diagnosed with post-service PTSD which was undiagnosed in service and caused his UA. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., 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, "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."

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

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AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition.

However, while the Board does not condone Petitioner's misconduct of 1,656 days UA, it concluded clemency is appropriate in his case. In making this finding, the Board concluded that his service in [REDACTED] mitigated his misconduct and that a grant of clemency was appropriate in his case. The Board considered that he did not have any misconduct prior to deploying or during deployment to [REDACTED] and he served honorably during that period. The Board also took into consideration, once he was contacted by Headquarters Marine Corps, he reported as directed. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (GEN). 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.

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. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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 29 January 1975, his "General (Under Honorable Conditions)" 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-1J" reentry code.

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

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/19/2023

