



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

█
Docket No. 3168-23

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) 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) 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 15 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 and change his narrative reason for separation from “Drug Abuse” to “Secretarial Authority,” 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 25 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), the advisory opinion (AO) furnished by a 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.

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c. The Petitioner enlisted in the United States Marine Corps and began a period of active duty service on 17 February 2004.

d. On 12 July 2004, Petitioner was formally counseled for underage drinking and failure to remain with his liberty buddy.

e. Petitioner was deployed in support of Operation Iraqi Freedom (OIF) from 17 February 2005 to 22 September 2005.

f. In November 2005, Petitioner was injured in a car accident. He was the driver and admitted to drinking prior to driving and swerving to avoid a deer.

g. On 23 March 2006, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for disobeying a lawful order by underage drinking. He did not appeal this NJP.

h. On 14 June 2007, Petitioner received his second NJP for violating UCMJ Article 112(a), for wrongful use of a controlled substance (cocaine). He did not appeal this NJP.

i. On 30 July 2007, 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 his case at an ADSEP board and refused substance abuse treatment.

j. On 23 August 2007, Petitioner was discharged from the Marine Corps for misconduct due to drug abuse with an OTH characterization of service and assigned an RE-4 reenlistment code.

k. Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) as a result of his military combat service, which led to self-medicating with alcohol and drugs, and ultimately led to his OTH discharge. 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 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:

There is behavioral evidence of an alcohol or substance use disorder during military service. Post-service, he has received a diagnosis of PTSD that has been attributed to combat exposure that is temporally remote to his military service. While the Petitioner's alcohol and substance use may have worsened following combat exposure, there is insufficient evidence to attribute his alcohol and substance use solely to self-medication of PTSD symptoms, given his problematic alcohol use prior to his deployment. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

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The Ph.D. concluded, “it is my clinical opinion there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD.”

1. In response to the AO, Petitioner argued that the problematic substance abuse did not occur until after return from deployment, and highlighted that he only had one counseling for underage drinking prior. He contends that his PTSD diagnosis is temporally remote only because he could not afford treatment after denial of VA treatment due to his OTH discharge. He asserts that his substance abuse was self-medication directly due to combat trauma.

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 “Other than Honorable” conditions to “Honorable” (HON) with corresponding changes to his narrative reason for separation, separation authority, and separation code.

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 diagnoses of Major Depressive Disorder (MDD), recurrent, moderate; PTSD, sedative, hypnotic; Anxiolytic Abuse; Stimulant Abuse; and Alcohol Abuse. 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 military combat exposure. 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 conditions were possible causative factors for most of the misconduct underlying his discharge and therefore mitigated his conduct. The only misconduct that occurred prior to his deployment was minor in nature and would not have formed the basis for separation. 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.

The Board also concluded that Petitioner’s narrative reason for separation, separation authority, and separation code should be changed to reflect “Secretarial Authority,” as the misconduct committed by the Petitioner was mitigated by his mental health conditions due to service connected combat exposure.

Notwithstanding the above corrective action, the Board concluded that the Petitioner was assigned the correct reentry code based on the totality of the circumstances, and that this code was proper and in compliance with all Department of the Navy and Marine Core directives and

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policy at the time of his discharge. Although Petitioner provided a compelling argument with regards to his characterization of service and narrative reason for separation, it does not change the fact that he was separated from the service due to his misconduct and therefore his reentry code should remain unchanged. Ultimately, the Board determined 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.

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 23 August 2007, the characterization of service was "Honorable," the narrative reason for separation was "Secretarial Authority," the separation authority was "MARCORSEPMAN par. 6214," and the separation code was "JFF1."

That Petitioner be issued a new Honorable discharge certificate.

That no further changes be made to the record.

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.

10/4/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]