



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

██████████
Docket No. 3404-23
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, 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)
(d) USD Memo, 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record
(3) Advisory Opinion by a Ph.D., Licensed Clinical Psychologist, 13 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, hereinafter referred to as the Board, requesting that his discharge be upgraded to either "Honorable" or "General Under Honorable Conditions" and that his narrative reason for separation be changed to "Secretarial Authority" or "Miscellaneous / General Reasons."

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 29 September 2023 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was considered favorable to Petitioner's mental health contentions.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review Petitioner's application on its merits. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Petitioner enlisted in the Marine Corps and began a period of active duty service on 21 March 1990.¹

b. From 16 December 1990 through 15 March 1991, Petitioner participated in Operation DESERT SHIELD and STORM as a field artilleryman. During this period of combat service, his proficiency and conduct marks were, respectively, 4.4 and 4.4, and he served without incident.

c. Approximately two months after his redeployment, on 21 May 1991, Petitioner was subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 108 due to destruction of government property. Although his reduction in grade and forfeitures of pay were suspended, he was awarded a 30-day period of correctional custody.

d. On 10 June 1991, the suspended portion of Petitioner's punishment was vacated pending charges before Special Court-Martial. He was tried and convicted on 19 August 1991 for four specifications under Article 86 of the UCMJ for failure to go at the time prescribed to his appointed place of duty on 9, 10, 11, and 12 June 1991 and two specifications under Article 91 for willfully disobeying lawful orders from a sergeant and gunnery sergeant. He was sentenced to a Bad Conduct Discharge, reduction to E-1, and confinement for 45 days.²

e. Petitioner was absent without authority between 4 and 5 October 1991; following his return, he received a psychiatric evaluation which produced no diagnoses.

f. The findings and sentence from Petitioner's SPCM were affirmed on 28 July 1992. Subsequently, his request for clemency and restoration was denied by the Naval Clemency and Parole Board, and he was discharged on 28 June 1993. At the time Petitioner's discharge was issued, his narrative reason for separation was recorded as "As a Result of a Special Court-Martial (Desertion)" with a separation code of "JJC2."

g. Petitioner sought documentary review from the Naval Discharge Review Board (NDRB) on the general basis of the fairness and equity of his discharge, which was conducted on 25 September 1995.

h. On 10 July 2013, Petitioner's previous application to the Board was reviewed in Docket Number 9714-12. He requested correction to his narrative reason for separation and requested an upgrade of his discharge to General (under honorable conditions), contending with respect to his narrative reason for separation that he had not deserted and that his disciplinary events were attributable to family emergencies. He elaborated having received a Red Cross message while deployed that his son was still born; after his return home, his mother suffered multiple strokes, declining health, a coma, then death. He indicated that he had run out of leave due to his

¹ Prior to beginning active duty, Petitioner was granted a moral waiver. His enlistment application reflects a pre-service arrest history of felonious assault, for which he received probation, assault, and a vehicle accident for which his state driver's license was indefinitely suspended.

² The pre-trial agreement limited the confinement to 39 days.

family's situation, had enormous stress from his family to be present to deal with those issues, and was not mature enough to deal with his problems more responsibly.

i. Seeking reconsideration with the assistance of counsel, Petitioner now contends that review of his punitive discharge merits liberal consideration because he incurred post-traumatic stress disorder (PTSD) during his combat deployment which was exacerbated by the personal stressors he previously raised in his first request to the Board. He asserts that his misconduct resulted from symptoms of his PTSD and depression; he also believes that his post-discharge character merits consideration of an upgrade on the basis of clemency. At a minimum, he also believes that his narrative reason for separation should be corrected to remove assertion that he was separated as a deserter.

j. In support of his application, Petitioner submitted: a copy of his emergency leave request; a personal statement and declaration; Department of Veterans Affairs (VA) records documenting his character of service determination, disability benefits questionnaire and rating decision, post-discharge clinical treatment records; and, post discharge clemency evidence to include his resume, criminal background report, bachelor's and master's degrees, certifications, and memberships, and four character letters.

k. Because Petitioner contends that PTSD or another mental health condition affected the circumstances of his discharge, the Board also requested enclosure (3), the AO, for consideration. The AO noted that Petitioner's medical evidence includes an opinion from the VA that he "was likely experiencing PTSD and depressive symptoms at the time of his misconduct allegations." The AO noted that, in spite of Petitioner's pre-service arrest history, he had no in-service misconduct until after his return from deployment and emergency leave and advised that "This could be considered behavioral evidence of undiagnosed symptoms of avoidance and irritability associated with PTSD and depression." The AO provided a clinical opinion that "there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence to attribute his misconduct to symptoms of PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board found that the totality of circumstances warranted relief. The Board reviewed this application under the guidance provided in references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it, however the Board concurred with the AO with respect to Petitioner's contentions that his PTSD and mental health conditions contributed to the misconduct for which he was discharged. The Board found that Petitioner's contentions merited liberal consideration with respect to his punitive discharge.³ In light of liberal consideration, and in conjunction with Petitioner's evidence of post-discharge character and otherwise meritorious record of combat service, the Board concluded that the

³ To this extent, the Board also observed that Petitioner's narrative reason for separation includes an error regarding the use of "desertion" rather than "other" with respect to his SPCM offenses and would, therefore, require at least a correction to remove the erroneous reference to desertion.

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totality of favorable factors outweighed the comparatively minor misconduct which resulted in Petitioner's court-martial conviction and discharge. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief to the extent of upgrading his character of discharge to under honorable conditions as well as changing his narrative reason for separation to remove reference the court-martial basis.

RECOMMENDATION

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

That Petitioner be issued a new DD Form 214 reflecting that his "General (under honorable conditions" discharge on 28 June 1993 was issued under the authority of "MARCORSEPMAN par. 6214" with a narrative reason for separation of "Determination of Service Secretary – Secretary of the Navy Plenary Authority" with a separation code of "JFF1." All other entries currently reflected in Petitioner's DD Form 214 are to remain unchanged.

That no further corrective action should be taken.

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

11/4/2023

