



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

██████████
Docket No. 3694-23
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/attachment
(2) DD Form 214, 15 Nov 12
(3) NAVMC 118(11), Administrative Remarks, 15 Nov 11
(4) Medical Record, Outpatient Encounters Detail, 22 Mar 12
(5) SF 600, Chronological Record of Medical Care, 22 Mar 12
(6) NAVMC 10132, Unit Punishment Book, 23 Mar 12
(7) NAVMC 118(11), Administrative Remarks, 23 Mar 12
(8) ██████████, CO ltr 1910 LEGAL, subj: Notification of Separation Proceedings, 8 Jul 12
(9) Petitioner's Memo 1910 LEGAL, subj: Acknowledgment of My Rights to be Exercised or Waived during Separation Proceedings, 8 Jul [12]
(10) Positive Urinalysis, 8 Aug 12
(11) ██████████ Surgeon ltr 1910 LEGAL, subj: Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) Screening in the Involuntary Administrative Separation Case of [Petitioner], 20 Aug 12
(12) NAVMC 118(13)/1070, Record of Conviction by Court-Martial, 27 Sept 12
(13) SF 600, Chronological Record of Medical Care, 1 Nov 12
(14) ██████████, Commander ltr, 1910 SJA, subj: Administrative Separation in the Case of [Petitioner], 6 Nov 12
(15) Advisory Opinion by a Licensed Clinical Psychologist, [22] 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 characterization of service be upgraded.¹

¹ Petitioner did not specify whether his characterization of service be upgraded to honorable or general (under honorable conditions).

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2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 11 October 2023. The names and votes of the panel members will be furnished upon request. Petitioner's allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (15), the advisory opinion (AO) furnished by 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 interests of justice to waive the statute of limitations and consider Petitioner's application on its merits. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

- a. Petitioner enlisted in U.S. Marine Corps and began a period of active duty service on 14 December 2009. Enclosure (2).
- b. Petitioner deployed to Afghanistan in support of Operation Enduring Freedom from 26 March 2011 to 20 October 2011, and received a Combat Action Ribbon. Enclosure (2).
- c. On 15 November 2011, Petitioner was issued an Administrative Remarks (Page 11) counseling concerning deficiencies in his performance and/or conduct, specifically: becoming intoxicated and being disrespectful to a Staff Non-Commissioned Officer. Enclosure (3).
- d. On 22 March 2012, Petitioner was seen by a substance abuse counselor after he was found in possession of Spice (synthetic marijuana) and issued a command referral. The Petitioner refused treatment. Enclosures (4) and (5).
- e. On 23 March 2012, Petitioner received non-judicial punishment for possession of Spice, in violation of Article 112a, Uniform Code of Military Justice (UCMJ). He was reduced in rank, required to forfeit \$835 pay per month for two months, and was restricted and required to perform extra duties for 45 days. Enclosure (6). Petitioner was issued a 6105 counseling entry that same day and advised that failure to take corrective action will result in disciplinary action and/or administrative separation. Enclosure (7).
- f. On 8 July 2012, Petitioner was notified of his command's intent to recommend his discharge from the Marine Corps by reason of misconduct due to drug abuse. Petitioner waived his right to counsel and to a hearing before an administrative separation board on the same day. Enclosures (8) and (9).
- g. On 8 August 2012, Petitioner's command received notice of positive urinalysis for Tetrahydrocannabinol (THC). Enclosure (10).
- h. On 20 August 2012, Petitioner was diagnosed with Post-Traumatic Stress Disorder

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(PTSD) related to combat service or deployment. Enclosure (11).

i. On 27 September 2012, Petitioner was found guilty at Summary Court-Martial of wrongful use of THC, in violation of Article 112a, UCMJ. He was sentenced to reduction in rank and restriction for 60 days. Enclosure (12).

j. On 1 November 2012, Petitioner was given a Medical Evaluation Before Involuntary Separation and was assessed as having PTSD and having a medical condition that may have a material impact on his behavior. Hand written comments stated: "Although SNM does have a diagnosis of PTSD, he is still responsible for his actions." Enclosure (13).

k. On 6 November 2012, the separation authority approved Petitioner's administrative separation from the Marine Corps under other than honorable (OTH) conditions by reason of misconduct due to drug abuse, noting: "Though the medical provider in this case determined the respondent had a medical condition which may have had a material impact on his behavior, I find the respondent's drug abuse warrants an Other Than Honorable characterization of Service." Enclosure (14).

l. On 15 November 2012, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to drug abuse. Enclosure (2).

m. Petitioner contends that PTSD contributed to his misconduct, he was an exemplary Marine who received recognitions and awards, and that since leaving the military, he has had no additional misconduct, has obtained steady full-time employment, and is in the process of owning his own construction firm. Enclosure (1).

n. In support of his application, Petitioner submitted a doctor's letter stating Petitioner's need for an assistance dog for his medical condition and five character references from Marines who served with him and attested to his good character and leadership. Four of the letters referenced shared combat experience. Enclosure (1).

o. Because Petitioner contends that PTSD affected the circumstances of his discharge, the Board also requested enclosure (15), an AO from a Licensed Clinical Psychologist (Ph.D.) for consideration. The AO noted, in pertinent part:

During military service, the Petitioner was diagnosed with PTSD. Clinicians evaluating him prior to separation noted that his medical condition may have an impact on his behavior. It is possible that his substance use could be considered behavioral indicators of self-medication of PTSD symptoms. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

The AO concluded: "it is my clinical opinion there is in-service evidence of a diagnosis of PTSD that may be attributed to military service. There is in-service evidence that his misconduct may be attributed to PTSD."

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MAJORITY CONCLUSION

After careful review and consideration of all of the evidence of record, the Board Majority determined that equitable relief is warranted in the interests of justice.

The Majority found no error in Petitioner's discharge under OTH conditions for misconduct at the time that it was administered. Noting that the occurrence of Petitioner's misconduct does not appear to be in question, as it was adjudicated through non-judicial punishment at the time. Further, a violation of Article 112a, UCMJ, may warrant a punitive discharge, so his misconduct was of sufficient severity to justify a discharge under OTH conditions. There does not appear to be any question regarding compliance with the procedural requirements necessary to administer a discharge under OTH conditions. Petitioner was properly notified that he was being processed for discharge from the Marine Corps for misconduct due to drug abuse, and that the least favorable characterization of service that he may receive was under OTH conditions. Despite this notice, Petitioner waived his right to a hearing before an administrative separation board. Petitioner has presented no evidence to suggest that this waiver was involuntary or ineffective. Accordingly, there was no error in Petitioner's discharge from the Marine Corps under OTH conditions for misconduct due to drug abuse.

Because he based his claim for relief in part upon the possibility that his misconduct was the product of his diagnosed PTSD condition, the Majority reviewed Petitioner's application in accordance with the guidance of references (b) through (d). Accordingly, the Majority applied liberal consideration to Petitioner's contention that his misconduct was influenced by a mental health condition. The Majority also noted that two separate medical professionals diagnosed Petitioner with PTSD and his chain of command was aware of this diagnosis prior to his discharge. The Majority also considered the favorable AO supporting the Petitioner's contention. Accordingly, the Majority found sufficient evidence to establish that Petitioner developed this mental health condition during his military service, and that his misconduct was likely to have been influenced by such a condition.

In addition to applying liberal consideration to Petitioner's claim that his misconduct was influenced by a mental health condition in accordance with references (b) through (d), the Majority also considered the totality of the circumstances to determine whether equitable relief may be warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, the fact Petitioner's discharge was based on repeated drug offenses and the Petitioner refused treatment. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military.

Upon review and consideration of all the evidence of record, the Majority noted and considered Petitioner's history of disciplinary infractions and does not condone his misconduct, but concluded that Petitioner's request warrants favorable action: An upgrade to a General (Under Honorable Conditions) characterization of service. Although not specifically requested by Petitioner, the Majority also determined that his narrative reason for separation should be

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changed to mitigate the future potential stigma arising from his discharge.

MAJORITY RECOMMENDATION

In view of the foregoing, the Board Majority 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 service ending on 15 November 2012 was characterized as "General (Under Honorable Conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation code was "JFF1"; and that his separation authority was "MARCORSEPMAN par 6214." All other entries currently reflected on his DD Form 214 are to remain unchanged.

That a copy of this record of proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board Minority found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusion above that there was no error in Petitioner's discharge from the Marine Corps under OTH conditions for misconduct due to drug abuse at the time that it was administered. While the Minority did concur with the Majority conclusion that there was sufficient evidence to support Petitioner's contention that his misconduct was influenced by a diagnosed mental health condition, the Minority did not believe this condition mitigated his misconduct because the Petitioner refused treatment and repeated his misconduct.

The Minority also considered the totality of the circumstances to determine whether equitable relief may be warranted in the interests of justice in accordance with reference (e). In this regard, the Minority considered potentially mitigating circumstances, including the Petitioner's contentions that since leaving the military, he has had no additional misconduct, has obtained steady full-time employment, and is in the process of owning his own construction firm. The Minority did not believe the mitigating circumstances to be sufficient to justify an upgrade of Petitioner's discharge.

MINORITY RECOMMENDATION

In view of the foregoing, the Board Minority recommends that no corrective action be taken on 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.

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5. The foregoing action of the Board is submitted for your review and action.

11/3/2023

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

_____ Reviewed and Approved Other (Grant Relief – “Honorable”; that the narrative reason for his separation was “Secretarial Authority”; that his separation code was “JFF1”; and that his separation authority was “MARCORSEPMAN par 6214.”)

_____ Reviewed and Approved Board Majority Recommendation (Grant Relief – “General (Under Honorable Conditions)”; that the narrative reason for his separation was “Secretarial Authority”; that his separation code was “JFF1”; and that his separation authority was “MARCORSEPMAN par 6214.”)

_____ Reviewed and Approved Board Minority Recommendation (Deny Relief)

11/24/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]