



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

██████████
Docket No. 3770-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████ USMC

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 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 18 November 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 discharge be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 18 December 2023, and, pursuant to its regulations, determined 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 his naval service records, and applicable statutes, regulations, and policies. In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided 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 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. Petitioner enlisted in the U.S. Marine Corps on 31 August 1979 and completed a period of Honorable service on 30 August 1982. He reenlisted three additional times, the last on 14 October 1989, and participated in both Operation Desert Shield and Operation Desert Storm. On 19 April 1992, Petitioner arrested for Robbery, for which he was later convicted and sentenced to be confined for two years at the [REDACTED] State Prison. After his arrest, he was notified of pending administrative processing by reason of misconduct for the commission of a serious offense (COSO), at which time he waived his right to consult with counsel and to have his case heard before an administrative discharge board. On 16 September 1992, the separation authority directed he be discharge with an Other Than Honorable (OTH) characterization of service for COSO and be reduced in rank to LCPL/E-3 upon separation. On 24 September 1992, he was so discharged.

d. Petitioner contends that: (1) he incurred Post-Traumatic Stress Disorder (PTSD) and other mental health concerns from military combat, (2) he pleaded guilty to an offense he did not commit because of the potential 20-year sentence, (3) he was already suffering from stress due to combat, (4) at the time he did not know what else to do, (5) he would appreciate a review of his service history, (6) he has been a model citizen since the time of this situation, (7) he did not commit nor was he involved in the robbery, and (8) the “guy” that committed the robbery got away with it and, “I ended up suffering a penalty.”

e. For purposes of clemency consideration, the Board noted Petitioner provided copies of his DD Form 214s but no documentation describing post-service accomplishments or advocacy letters.

f. In connection with Petitioner’s assertions that he incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances of his separation, the Board requested, and reviewed, enclosure (3). The AO 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as armed robbery is not a typical mental health symptom and he claims innocence of the charges. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

g. Petitioner was previously denied relief by the Naval Discharge Review Board on 3 January 1995. However, the Board noted errors on his DD Form 214. Specifically, blocks 4a and 4b of the DD Form 214 should read “LCPL” and “E-3” respectively, block 12a should read, “14 Oct 89,” and his previous periods of continuous Honorable service should be documented.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants favorable action in the form of partial relief. Specifically, the Board noted the errors documented during his NDRB hearing were not corrected and his DD Form 214 is missing his previous periods of Honorable service. The Board determined these administrative errors require correction.

With regard to Petitioner's request that his characterization of service be upgraded, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and the previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by his civilian arrest and conviction, outweighed any mitigating factors presented. In making this finding, the Board considered the seriousness of his misconduct and the likely discrediting effect his conduct had on the Marine Corps. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute his misconduct to PTSD or a mental health condition. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting the requested relief as a matter of clemency or equity.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) indicating his rank as "LCPL" in block 4a, his paygrade as "E-3" in block 4b, his active duty start date as "14 October 1989" in block 12a, and his continuous Honorable service for the period of 29 November 1983 to 13 October 1989 in block 18.

No further changes be made to Petitioner's record.

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 Regulation, 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.

1/10/2024

[REDACTED]