



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

█
Docket No. 4197-23

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

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 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 6 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). Additionally, the Board also considered the advisory opinion (AO) furnished by 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..

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

- c. The Petitioner enlisted in the United States Marine Corps and began a period of service on 15 August 2003.
- d. On 22 January 2004, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for 39 hours of unauthorized absence (UA), from 17-18 January 2004.
- e. On 19 February 2004, Petitioner received his second NJP for violating UCMJ Article 134, for breaking restriction.
- f. From June 2004 to January 2005, Petitioner was mobilized in support of Operation Iraqi Freedom, where he participated in [REDACTED], [REDACTED], and subsequently awarded the Combat Action Ribbon.
- g. On 15 June 2005, Petitioner received his third NJP for violating UCMJ Article 92, for disobedience due to underage drinking.
- h. On 29 July 2005, Petitioner received his fourth NJP for violating UCMJ Article 91, for disrespectful language.
- i. On 19 January 2006, Petitioner successfully completed intensive outpatient treatment for alcohol abuse.
- j. Petitioner underwent a psychological examination on 26 January 2006, wherein he reported difficulty adjusting to life after returning from Iraq. Specifically, he reported post-combat stress, weight gain, Post Traumatic Stress Disorder (PTSD) symptoms, and excessive drinking. He was diagnosed with "Adjustment disorder with mixed disturbance of emotions and conduct, and alcohol dependence." The treating physician noted that Petitioner "reported that while over in Iraq, they lost many guys. He reported, upon returning home, he 'drank to go to sleep.' The patient reported that due to his drinking and difficulty dealing with his combat stress, he has received several NJPs."
- k. On 29 July 2005, Petitioner received his fifth NJP for violating UCMJ Article 86, for two specifications of UA (absence from formation and a 35-day period of UA) and Article 112(a), for wrongful use of cocaine.
- l. On 26 April 2006, 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 case at ADSEP board.
- m. On 29 June 2006, Petitioner was discharged from the Marine Corps for misconduct due to drug abuse with an OTH characterization of service and assigned an RE-4B reenlistment code.
- n. Petitioner contends he incurred PTSD as a result of his combat service, which led to avoidance behaviors, self-medicating with cocaine, and ultimately his OTH discharge. Petitioner

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

describes his combat trauma and his struggle to assimilate back to normal life post-deployment. In support of his request, Petitioner provided post-service evidence of a service connected PTSD diagnoses.

o. 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 Advisory Opinion (AO) provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued an AO dated 25 September 2023. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with mental health condition. It is possible that his difficulty adjusting following return from combat could have developed into a diagnosis of PTSD, but there is no evidence of a formal PTSD diagnosis. It is possible that his post-deployment incidents of underage drinking and disrespect could be attributed to his mental health concerns. There is insufficient information to attribute his substance use to a mental health condition, given his pre-service substance use history. While a brief period of UA could be attributed to avoidance associated with trauma symptoms, it is difficult to attribute extended UA to a mental health condition. His misconduct prior to his deployment would not be attributed to a mental health condition. 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 Ph.D. concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

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," and changing his basis for separation to "Secretarial Authority."

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 PTSD. The Board felt that the Petitioner submitted sufficient evidence to support his contention that the misconduct which formed the basis of his discharge and his related mental health symptoms were directly related to his combat exposure during military service. The Board felt that Petitioner's statement was sufficiently detailed and was further supported by both in-service and post-service medical

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

treatment notes. 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 a possible causative factor for the misconduct underlying his discharge and therefore mitigated his conduct. 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, or that his discharge was due to misconduct.

Notwithstanding the recommended corrective action below, the Board concluded that Petitioner's reenlistment code should remain unchanged. Although the Board found that the mitigating information warrants a characterization upgrade and change to the basis for separation, the fact that he was not recommended for reenlistment remains accurate and in compliance with Navy and Marine Corps regulations. Ultimately, the Board determined 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 29 June 2006, his character of service was "Honorable," his narrative reason for separation was "Secretarial Authority," the separation authority was "MARCORSEPMAN par. 6214," and the separation code was "JFF1."

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.

11/16/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]