



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

█  
Docket No. 4256-23  
Ref: Signature Date

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

Subj: REVIEW 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 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)  
(4) Advisory Opinion dated 14 Nov 2023

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his characterization of service be changed to Honorable. Enclosures (2) through (4) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 13 December 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, The Board also considered enclosure (4), an advisory opinion (AO) provided by a qualified mental health professional.

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.

c. Petitioner entered active duty with the Marine Corps on 27 May 2004. During the period from March and October 2005, Petitioner participated in █. On 28 May 2006, he received non-judicial punishment (NJP) for two specifications of failure to obey a

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lawful order. On 14 June 2006, a summary court-martial (SCM) convicted Petitioner of wrongful use of marijuana. As a result, Petitioner was notified of pending administrative separation action by reason of misconduct due to drug abuse. After waiving his rights, Petitioner's commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 4 August 2006, Petitioner was discharged for misconduct drug abuse with an OTH characterization of service.

d. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 1 May 2008, the NDRB denied Petitioner's request after determining his discharge was proper as issued.

e. Petitioner contends he incurred PTSD during military service due to military combat exposure. As a result, an AO was requested from a mental health professional. Enclosure (4) states in pertinent part:

Petitioner contended he incurred PTSD from military combat exposure. He provided a March 2022 evaluation from a civilian psychiatrist listing diagnoses of PTSD; Marijuana Use Disorder, in sustained remission; and Alcohol Use Disorder, moderate. The traumatic precipitants were attributed to his 2005 combat deployment to [REDACTED]. The Petitioner reported he experienced PTSD symptoms following return from [REDACTED], and "as an ersatz form of harm-reduction, [he] began smoking marijuana to decrease his alcohol consumption and to treat his PTSD symptomatology." He submitted a statement of support from a family friend. He provided evidence of post-service accomplishment. Department of Veterans Affairs records indicate the Petitioner first sought treatment for his symptoms in November 2006. There is no evidence that he was diagnosed with a mental health condition in military service, other than substance use disorder. Post-service, a civilian psychiatrist has diagnosed PTSD that has been attributed to combat exposure. It is possible that his misconduct could be attributed to symptoms of avoidance and irritability associated with PTSD, as there is no evidence of pre-deployment substance use. 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 post-service evidence from a civilian psychiatrist of a diagnosis of PTSD that may be attributed to military service. There is post service evidence to attribute his misconduct to PTSD."

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. While the Board noted Petitioner's misconduct and does not condone his actions. The Board concluded his PTSD/mental health condition (MHC) sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence outweighed the severity of his misconduct. In making this finding, the Board substantially concurred with AO that there is evidence that Petitioner's misconduct may be attributed to combat exposure. Accordingly, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been Other Than Honorable (OTH) and re-characterization to a General (Under Honorable Conditions) (GEN) discharge is now more appropriate. Based on this finding, the Board also determined that Petitioner's narrative reasoning for separation, separation authority, separation code, and reenlistment code should also be changed to reflect a Secretarial Authority discharge in the interests of justice.

Notwithstanding the corrective action recommended below, the Board determined Petitioner's request for an Honorable characterization of service is not appropriate based on his record of misconduct that included an NJP and a SCM conviction. 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 Wilkie Memo. However, after thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board determined that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for PTSD/mental health conditions, and that a GEN discharge characterization and no higher was appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 4 August 2004, his characterization of service was "General (Under Honorable Conditions)," with a narrative reason for separation of "Secretarial Authority," separation code of "JFF1," reenlistment code of "RE-1J," and a separation authority of "MARCORPSEPMAN 6214."

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.

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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 corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

12/26/2023

[REDACTED]