



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

█  
Docket No. 4328-23  
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) USD Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Petitioner's Naval Record  
(3) Advisory Opinion by a Ph.D., Licensed Clinical Psychologist, 6 Oct 23  
(4) Petitioner's Response to Advisory Opinion, 11 Oct 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 (Board), requesting that his characterization of service be upgraded.

2. The Board, consisting of █, and █ reviewed Petitioner's allegations of error and injustice on 16 October 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).

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 United States Marine Corps and commenced a period of active duty on 2 June 2003.

b. From 6 April 2004 to 14 July 2004, Petitioner was deployed to Iraq as a Machine Gunner (Military Occupational Specialty 0331) and regularly engaged in direct combat with insurgents, and was awarded the Combat Action Ribbon for his service.

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c. On 17 April 2004, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice Article 91, for disrespect, Article 92, for disobedience, Article 107, for making a false official statement, and Article 117, for using provoking speech or gestures. He did not appeal this NJP.

d. On 4 August 2006, Petitioner refused a Medical Officer's Evaluation concerning his substance abuse.

e. On 8 August 2006, Petitioner was found guilty at Summary Court Martial of violating UCMJ Article 112(a), for wrongful use of cocaine. He was sentenced to forfeitures of pay and 30-days confinement.

f. On 7 September 2006, Petitioner was notified that he was being processed for administrative separation (ADSEP) by reason of misconduct due to drug abuse. He elected his right to consult with qualified counsel and his right to present a case at an ADSEP board.

g. On 8 September 2006, Petitioner was found guilty at his second Summary Court Martial of violating UCMJ Article 112(a), for four specifications of wrongful use of amphetamines, methamphetamines, MDA, and MDMA (ecstasy). He submitted a statement denying use substances other than marijuana and claiming that he was being unfairly targeted due to discriminatory practices by the command. He was sentenced to forfeitures of pay, reduction in rank to E-1, and 30-days confinement.

h. On 19 October 2006, Petitioner refused a Medical Officer's Evaluation concerning his substance abuse.

i. On 31 October 2006, Petitioner was discharged from the Marine Corps based on misconduct due to drug abuse with an under Other than Honorable (OTH) characterization of service and assigned an RE- 4B reentry code.

j. In his request for relief, Petitioner contends that he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns from combat exposure in Iraq in 2004, which contributed to his misconduct. He explains that he turned to drugs in an effort to self-medicate due to the undiagnosed PTSD symptoms that he suffered from after combat exposure. In support of his request, Petitioner provided Department of Veterans Affairs (VA) medical records from March 2023 granting service connection for treatment purposes for PTSD. He submitted a September 2022 VA evaluation noting a diagnosis of PTSD and stating that Petitioner became "addicted to cocaine of and on from 2004 to 6-2021. Heaviest use was after discharge. Every weekend and daily for 8 months. First used Meth. after returning from Iraq. 2004 to 2019. Daily use for one year." He also provided evidence that he sought treatment from the VA from April to June 2009 for symptoms of PTSD.

k. As part of the Board's review process, a qualified mental health professional reviewed Petitioner's contentions and the available records and issued an advisory opinion (AO), enclosure (3). The AO noted in pertinent part:

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There is no evidence that the Petitioner was diagnosed with a mental health condition during military service, in part due to his refusal of evaluation prior to separation. Post-service, the VA has granted service connection for PTSD attributed to combat exposure. While his misconduct did occur during or after deployment, there is insufficient evidence to attribute all of his misconduct to symptoms of PTSD. For example, he denied engaging in the substance use for which he received NJP during military service. Additionally, while disobedience and disrespect could be behavioral indicators of symptoms of irritability associated with PTSD, it is difficult to attribute false official statement to PTSD. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD."

1. Petitioner provided a response to the AO, enclosure (4), highlighting that he was never in trouble prior to Iraq and supplied a witness statement to that effect. He also explained that he lied about self-medicating with drugs, which is behavior consistent with many addicts.

## CONCLUSION

After careful review and consideration of all of the evidence of record, the Board determined that full relief is warranted in the form of upgrading Petitioner's characterization of service from "Other than Honorable" (OTH) to "Honorable" (HON) with corresponding changes to his narrative reason for separation, separation authority, and separation code, however the Board determined that Petitioner's reentry code should remain "RE-4B."

While the Board noted Petitioner's misconduct and does not condone his actions, it concluded that his diagnosed PTSD sufficiently mitigated his misconduct to merit full relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence offset the severity of the misconduct. In making this finding, the Board substantially concurred with AO that, while there is no evidence of an in-service diagnosis, he has provided post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. The Board felt that his combat exposure and resulting PTSD may have contributed to the circumstances surrounding his substance abuse and ultimately his separation. Accordingly, the Board concluded that a re-characterization of Petitioner's service to HON and a change to his separation basis is appropriate and warranted in this case.

Additionally, the Board concluded Petitioner's narrative reason for separation, separation code, and separation authority should also be changed, as the misconduct committed by the Petitioner was mitigated by his mental health issues. Specifically, the Board felt that changing the narrative reason for separation to Secretarial Authority would be more appropriate than continuing to label the separation as misconduct.

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The Board, however did not find an error or injustice with the Petitioner's RE-4B reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of the circumstances, and that such reentry code was proper and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of his discharge.

#### 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, Certificate of Release or Discharge from Active Duty that shows that on 31 October 2006, his characterization of service was "Honorable," narrative reason for separation was "Secretarial Authority," separation authority was "MARCORPSEPMAN, Par 6012," and separation code was "JFF1."

That Petitioner be issued an Honorable Discharge Certificate.

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 titled 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.

11/22/2023

