



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

█  
Docket No. 4428-23  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," of 25 August 2017 (Kurta Memo)  
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (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 and to make other conforming changes to his DD Form 214.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 1 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 an advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's response to the AO.

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

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. The Petitioner originally enlisted in the U.S. Marine Corps and began a period of active service on 8 June 1999. Petitioner's pre-enlistment physical examination, on 22 October 1998, 1990 and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms. Petitioner continuously served on active duty leading up to his reenlistment that occurred on 23 March 2004.

d. During Petitioner's first enlistment, on 27 January 2000, his command issued him a "Page 11" counseling warning (Page 11) documenting an assault. The Page 11 advised him that a failure to take corrective action may result in administrative separation, limitation of further service, or disciplinary action under the Uniform Code of Military Justice. On 16 May 2000, Petitioner received non-judicial punishment (NJP) for two separate specifications of violating a lawful order. The same day Petitioner's command issued him a Page 11 documenting the NJP.

e. On 12 November 2004, Petitioner subsequently submitted a voluntary written request for an administrative undesirable discharge for the good of the service to avoid trial by court-martial for: (a) drunken and reckless driving that resulted in an injury to another service member, and (b) indecent assault. Petitioner consulted with counsel prior to submitting his request. Petitioner voluntarily admitted guilt to the drunk driving offense but not the indecent assault. Petitioner acknowledged if request is approved, the characterization of service will be undesirable without referral or consideration by an administrative separation board. Petitioner understood that with an undesirable discharge he would be deprived of virtually all veterans benefits based on his current period of service, and that he may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of the discharge received therefrom may have a bearing. As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a Military Judge. Ultimately, on 21 December 2004, Petitioner was discharged from the Marine Corps with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code. Upon his discharge, Petitioner was issued a DD Form 214 that did not reflect his previous period of continuous Honorable service.

f. On 8 November 2007 the Naval Discharge Review Board (NDRB) denied Petitioner relief. Petitioner had contended, in part, that he had only one isolated incident during his record of service.

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

g. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's original contentions and the available records and issued an AO on 10 October 2023. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service, although there is behavioral evidence of a possible alcohol use disorder that preceded his deployment. Post-service, he has provided evidence of mental health concerns that are temporally remote to military service and appear unrelated. There is no evidence of PTSD. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition. Some of his misconduct occurred prior to deployment, and there is insufficient evidence to attribute post-deployment fraternization 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.

Following a review of Petitioner's AO rebuttal, the Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, the Board noted that the misconduct forming the basis of Petitioner's OTH discharge technically occurred during his second enlistment period. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his first enlistment was completed without any significant adverse disciplinary action. The Board was aware that the Department of the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

Regarding Petitioner's request to upgrade his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and contentions that: (a) Petitioner successfully completed his first enlistment, (b) Petitioner expressed his mental health condition to his chain of command several times, (c) Petitioner was discouraged from seeking mental health assistance on active duty, (d) Petitioner expressed to his drill instructor that if he didn't graduate due to a minor infraction he would kill himself, (e) following his return from a 2003 deployment Petitioner developed a substance abuse disorder and his depression worsened, (f) post-service in 2005 and 2008 Petitioner was diagnosed with major depressive disorder (MDD), (g) in 2014 and 2016 Petitioner was hospitalized and diagnosed with MDD and PTSD after

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

attempting suicide, and (h) outstanding post-service conduct. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence Petitioner provided in support of his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, even under the liberal consideration standard, the Board concluded that there was no nexus whatsoever between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of Petitioner's discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of his misconduct outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Additionally, the Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. 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. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of material errors warranting the following corrective action.

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 21 December 2004, to reflect the following comment added to the Block 18 Remarks section:

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

“CONTINUOUS HONORABLE SERVICE FROM 08JUN1999 TO 22MAR2004.”

Following the correction to the DD-214 for the period ending 21 December 2004, that all other information currently listed on such DD-214 remain the same.

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.

12/5/2023

[REDACTED]