



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

██████████
Docket No. 4478-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████ 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) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 28 Nov 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 for an upgrade of his characterization of service.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 24 January 2024 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was afforded 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 regulation 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 enlisted in the U.S. Marine Corps and began a period of active duty on 7 June 1999. The Petitioner honorably fulfilled his service obligation, on 1 October 2003, and immediately reenlisted and began another period of active duty. During his second period of

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enlistment, Petitioner deployed to Iraq from July 2004 until February 2005, to participate in Operation Iraqi Freedom.

d. Petitioner received non-judicial punishment (NJP), on 9 August 2005, for disobeying a lawful order by driving under the influence of alcohol. He received his second NJP, on 15 February 2006, for purchasing and providing alcohol to underage Marines.

e. Petitioner was evaluated for substance abuse on 27 February 2006, and he was recommended for intensive outpatient treatment.

f. Petitioner received his third NJP, on 27 April 2006, for failure to go to his appointed place of duty, and disobeying a lawful order. On 24 July 2006, Petitioner was issued a counseling warning and failure to take corrective action in performance and conduct may result in administrative separation. Ultimately, he was notified of administrative separation processing for pattern of misconduct. He waived his right to an administrative separation board. The Commanding Officer made his recommendation to the Separation Authority that he be discharged for pattern of misconduct and be assigned an Other Than Honorable (OTH) characterization. The Separation Authority accepted the recommendation and directed Petitioner be discharged. He was so discharged on 21 November 2006.

g. Post-discharge, the Petitioner twice applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied Petitioner's request, on 22 February 2008 and 22 November 2013, after determining his discharge was proper as issued.

e. Petitioner contends the following injustices warranting relief:

(1) After leaving Iraq he couldn't balance "the world I'd come from with the one I returned to;" and

(2) His pattern of misconduct was a result of an undiagnosed case of PTSD which started after his return from Iraq.

f. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

The Petitioner submitted extensive diagnostic summaries from social services at the [REDACTED] VA Healthcare system. He was diagnosed with Intermittent Explosive Disorder and a rule-out of PTSD in 2012. In 2013, it is noted that he deployed to Iraq and although PTSD might be diagnosed, at that time the Petitioner refused to talk about his deployment and therefore the diagnosis could not be confirmed. In 2023, he was diagnosed with PTSD, Bipolar Disorder Mixed, and Depressive Disorder Not Otherwise Specified. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of temporally remote post-service diagnostic summaries from

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the VA. Although periods of unauthorized absence, avoidance and alcohol abuse are common symptoms of PTSD, repetitive failure to follow orders after warnings and counseling are not. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his PTSD/MHC, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition.

However, while the Board does not condone Petitioner's misconduct, it concluded that his service in Iraq mitigated his misconduct and that a grant of clemency was appropriate in his case. The Board considered that he did not have any misconduct prior to deploying, or during deployment, to Iraq and he served honorably during that period. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member'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 mental health conditions, and that a GEN discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's basis for separation and reentry code remains appropriate in light of his misconduct. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 21 November 2006, he was discharged with a "General (Under Honorable Conditions)" characterization of service.

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

2/2/2024

