



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

██████████  
Docket No. 4678-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,  
USN, XXX-XX-██████████

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) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures  
(2) Advisory Opinion (AO) of 14 Nov 23  
(3) Rebuttal to AO (Counsel's Brief)

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 discharge be upgraded. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 19 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). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Navy and began a period of active duty on 7 February 2004. He initially trained as a hospital corpsman and, subsequently, as a combat medic to serve with [REDACTED].

c. Petitioner was subject to nonjudicial punishment on 8 February 2006 for a violation of the Uniform Code of Military Justice (UCMJ) under Article 92 due to his failure to obey a lawful order by wrongfully failing to report misconduct by another service member.

d. On 17 July 2006, Petitioner transferred to [REDACTED] where his performance evaluation indicates that he served as the Line Company Corpsman, [REDACTED], [REDACTED], [REDACTED], with which he deployed in support of [REDACTED] from 15 April 2007 through 15 July 2007, then remained deployed in support of [REDACTED] as Line Company Corpsman, [REDACTED], [REDACTED] from 15 July 2007 through 10 December 2007.

e. Petitioner's overall trait average of 3.67 in his Evaluation Report & Counseling Record for the period from 16 July 2007 through 29 February 2008 was supported by highly positive comments documenting his competent and dedicated medical services, to include participating two to three foot patrols per day to "allow the Marines and Soldiers much needed rest" and ensure they were able to perform assigned missions. However, he was diagnosed in January 2008 with post-traumatic stress disorder (PTSD) due to nightmares and episodes of dissociation.

f. Following a period of hospitalization for severe PTSD symptoms, with medical notes documenting that a traumatic brain injury (TBI) from the deployment also needed evaluation and treatment, Petitioner was transferred on 1 March 2008 to [REDACTED] medical holding company in a limited duty status.

g. His records from April 2008 indicate that he was compliant with ongoing treatment. Following evaluation and treatment of his TBI in May 2008, his treating provider assessed that his TBI was not complicating his recovery. Although he experienced a dissociative episode with a loss of consciousness during a psychotherapy session in June of 2008, his CT scan was normal, and a subsequent medical note from August 2008 recommended that Petitioner was competent for himself and his actions.

h. During the course of these evaluations, Petitioner was reassigned on 16 July 2008 to the First Lieutenant as part of a working party to beautify command grounds and spaces. His evaluation during this period reflects that he "had to be micromanaged and could not be counted on to muster on time to complete assigned tasks" and demonstrated a "determination to not conform with military standards."

i. Petitioner's medical treatment continued after he was initially placed into pre-trial confinement. In September of 2008, he was placed into an Assault Risk status due to aggressive behavior during possible dissociative episodes and reported to his providers his desire to remain isolated to prevent the possibility of further assault while in a dissociative state. He also reported that he had started using cannabis to manage his anxiety; however, his reported cause of anxiety was due to his impending medical board.

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j. In December 2008, a psychiatric evaluation noted “prior history of PTSD, but apparently events [Petitioner] claimed never occurred and [Petitioner] was not actually in combat. Malingering is a consideration, but there is not sufficient evidence to demonstrate that at this time.” He was diagnosed with Dissociative Disorder at that time and later, in January 2009, diagnosed with Anxiety Disorder.

k. Petitioner was again placed into pretrial confinement in February of 2009 pending trial by General Courts-Martial (GCM). He was subsequently tried and convicted, on 28 May 2009, for the following UCMJ violations:

- (1) Article 86, absent without leave;
- (2) Article 91, insubordinate conduct toward a petty officer;
- (3) Article 107, false official statement;
- (4) Article 109 (damage to property other than military property);
- (5) Article 112a, wrongful use of controlled substances;
- (6) Article 128, assault; and,
- (7) Article 134, communication of a threat and reckless endangerment.

He was sentenced to confinement for 20 months, reduction to E-1, a Bad Conduct Discharge (BCD) and forfeiture of all pay and allowances. He was discharged on 19 August 2010, presumptively following completion of appellate review of the findings and sentence from his GCM.

l. Petitioner contends that he incurred PTSD, TBI, and other mental health conditions while serving as a combat medic in [REDACTED] with [REDACTED]. He states that he was a passenger in a vehicle that was impacted by an improvised explosive device (IED) that killed the passenger sitting in front of him and injured him, causing a TBI. He subsequently developed PTSD with dissociative symptoms, diagnosed in-service, which he believes contributed to his misconduct or, at least, should mitigate it. He further claims that he desired to avoid further potential for assault or violence and therefore sought to remain in isolation both before and after his time in the brig. In support of his contentions, he submitted his medical record and a letter from his mother. Additionally, a brief from his legal counsel was received in rebuttal to the AO.

m. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested the AO at enclosure (2) for consideration. In relevant part, the Board’s licensed clinical psychologist and physician advisor/psychiatrist, in a joint opinion, provided the following assessment:

(1) “As his treatment team came to know him better, following observation in the outpatient setting, inpatient hospitalization, and in the brig, questions arose regarding the validity of his diagnosis, as the providers received information that the Petitioner’s report was not validated by collateral sources.”

(2) “Petitioner’s poor compliance with treatment and sudden improvement in symptoms upon entering a new relationship are not consistent with a diagnostic profile of severe mental health concerns with on-going TBI symptoms.”

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(3) “TBI symptoms were not considered a factor in his behavior.”

(4) “Some of his misconduct, such as insubordinate conduct, is consistent with irritable behavior associated with mental health concerns. However, in this case, it is difficult to attribute his misconduct from general court martial to PTSD, TBI, or other mental health concerns, given the evidence in his substantial treatment records over a long period of observation. In particular, it is difficult to attribute false official statements to mental health concerns, given evidence in the record that his report was invalid.”

(5) “While the Petitioner claims that the assaults he engaged in were due to dissociative state, clinicians treating him at the time had questions regarding this conclusion.”

(6) “Petitioner has provided no post-service medical evidence in support of his claims.”

n. The AO concluded that “there is in-service evidence of a head injury. There is insufficient evidence of residual TBI symptoms over time. There is in-service evidence of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition.”

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants favorable action in the form of relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board noted Petitioner’s misconduct and does not condone it. Additionally, although the AO documented in-service evidence of both TBI and diagnoses of PTSD and other mental health conditions, the Board acknowledged that the AO found insufficient evidence to attribute Petitioner’s misconduct to PTSD, TBI, or another mental health condition within the auspices of guidance regarding liberal consideration. However, the Board noted Petitioner’s duty assignment as a combat medic with two Marine Corps combat arms units over an extended period of service, documentation of his duties which included standing patrols in place of combat Marines and soldiers to provide them with their “much needed” rest, and his personal account of his experience during his deployment and his struggle with his mental health symptoms afterwards. Notwithstanding that medical providers vaguely indicated a general inability to substantiate his account of the traumas which contributed to his symptoms, the Board found Petitioner’s account of his experiences credible to the extent that, even if his misconduct is not directly attributable to PTSD or mental health condition, the Board concluded that he experienced sufficient trauma and has suffered sufficient symptoms to warrant consideration of clemency with respect to the impact his experience has had on his overall well-being and mental health. The Board viewed it as especially compelling that Petitioner contends he sought to be placed into the highly restrictive confinement of isolation during his pre-trial confinement to avoid the risk of harm to others, and the available records, consistent with the analysis provided in the AO, reflect that he did in fact make such a request. Ultimately, although the medical and

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psychiatric analysis of Petitioner's diagnoses and symptoms does not support attribution of his offenses to his PTSD, TBI, or another mental health condition, the Board concluded that Petitioner's experiences during his combat deployment as well as his subsequent symptoms merit consideration of clemency. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief and upgrade Petitioner's punitive discharge to General (Under Honorable Conditions).

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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Further, the Board found Petitioner's basis for separation and assigned reentry code to be appropriate in light of his GCM conviction and unsuitability for continued military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

Finally, the Board noted Petitioner's record appears to be missing awards normally earned during combat tours. Therefore, the Board concluded it would be appropriate for Headquarters, U.S. Marine Corps to conduct an administrative awards review of Petitioner's record.

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) indicating that, on 19 August 2010, he was discharged with a "General (Under Honorable Conditions)" characterization of service.

Headquarters, U.S. Marine Corps will conduct an administrative review of Petitioner's awards.

That no further changes be made to Petitioner's record.

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 Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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

2/12/2024

