



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

█  
Docket No. 5653-23

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) 10 U.S.C. § 1552  
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(c) USD Memo of 25 August 2017 (Kurta Memo)  
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service to Honorable.

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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered an 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.

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 service on 13 April 1999. On 18 March 1999, Petitioner signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Petitioner's pre-

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enlistment physical, on 19 March 1999, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 3 May 2001, a Navy Drug Screening Laboratory message indicated Petitioner tested positive for cocaine at a level of 7,743 ng/ml, well above the established Department of Defense testing cut-off level for cocaine of 100 ng/ml. On 11 May 2001, Petitioner received non-judicial punishment (NJP) for the wrongful use of cocaine. Petitioner did not appeal his NJP.

e. Consequently, Petitioner was notified of administrative separation proceedings by reason of misconduct due drug abuse. Petitioner consulted with counsel and waived his rights to submit written statements, and to request an administrative separation board.

f. In the interim, on 15 May 2001, Petitioner's command issued him a Page 11 counseling warning documenting his NJP. On 6 June 2001, Petitioner received NJP again for the wrongful use of cocaine. Petitioner did not appeal his second NJP.

g. On 7 June 2001, Petitioner's separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 12 June 2001, the Petitioner was discharged from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4B reentry code.

h. On 22 February 2021, the VA granted Petitioner a service-connection for PTSD with a 50% disability rating, effective 23 July 2019.

i. As part of the review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO dated 22 December 2023. The Ph.D. stated in pertinent part:

Petitioner submitted VA disability and compensation paperwork indicating 50% service connection for PTSD. He submitted the Disability Benefits Questionnaire (DBQ), the findings of which are consistent with his anecdote. Additionally, he submitted two character references and post-service accomplishments. Although there is evidence of a post-service diagnosis of PTSD that is likely related to the two traumatic events described by the Petitioner, cocaine use and continued disrespect toward a NCO are not common behaviors caused by PTSD symptoms. 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 Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition (PTSD) that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

Following a review of Petitioner's AO rebuttal, the Ph.D. did not change or otherwise modify the original AO.

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j. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner argued that the standards and practices of the United States Marine Corps in the late 1990s and early 2000s were not adequately equipped to deal with mental health issues such as PTSD. Petitioner contended that his military service record revealed a clear pattern of committed and professional service during his initial years in the Corps which were disrupted following traumatic events, including a near-death experience and a distressing incident involving the loss of a fellow Marine. Petitioner also cited his many noteworthy post-service personal and professional accomplishments. For purposes of clemency and equity consideration, the Board considered the evidence submitted in support of Petitioner's application.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board initially determined that Petitioner's administrative separation was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

The Board did not grant relief based on any mental health considerations. 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, the Board concluded that there was no convincing evidence of any nexus 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 his 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 unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that Petitioner's misconduct was intentional and willful 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.

Notwithstanding, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's drug-related misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) on clemency grounds is appropriate at this time. In granting his discharge upgrade, the Board cited Petitioner's exemplary post-service accomplishments and conduct, and notable community service and involvement.

Additionally, notwithstanding the recommended corrective action below, the Board was not

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willing to grant an Honorable discharge characterization. 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 significant obvious negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that despite his overall conduct trait average, a GEN discharge characterization was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically and given the totality of the circumstances and purely as a matter of clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

Further, the Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

#### RECOMMENDATION:

In view of the foregoing, the Board directs the following corrective action.

That Petitioner's character of service, for the period ending 12 June 2001, be changed to "General (Under Honorable Conditions)," and that no other changes be made to the DD Form 214. Note: Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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

That no further changes be made to 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.

2/26/2024

