



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

█
Docket No. 6530-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
█ 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.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 23 February 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 8 March 2005. Petitioner's pre-enlistment physical examination, on 26 February 2005, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

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Petitioner specifically answered “No” to ever having or currently having “asthma, wheezing, or inhaler use” on his medical history.

d. On 19 October 2005, Petitioner received non-judicial punishment (NJP) for unauthorized absence and for failing to obey a lawful order. Petitioner did not appeal his NJP.

e. On 7 November 2005, the Commanding Officer, [REDACTED], [REDACTED] (CO) recommended Petitioner’s administrative separation due to his asthma that existed prior to his entry on active duty. The CO noted your asthma was a physical condition, not a disability for administrative separation purposes.

f. Petitioner’s command notified him of administrative separation proceedings by reason of a physical condition of such severity as to significantly impair his ability to function effectively in the military environment. On 7 November 2005, the Petitioner waived his rights to consult with counsel and to submit a rebuttal statement. Given that Petitioner had not completed six (6) or more years of active duty service, he was not permitted to request an administrative separation board; however, the least favorable characterization Petitioner could potentially receive was General (Under Honorable Conditions) (GEN). Ultimately, on 7 December 2005, the Petitioner was discharged from the Marine Corps for a condition, not a disability with a GEN characterization of service and assigned an RE-4 reentry code.

g. Based on his available service records, Petitioner’s overall conduct trait average assigned on his periodic performance evaluations during his brief enlistment was approximately 4.0. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service.

h. As part of the review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 10 January 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has granted service connection for a mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct or the circumstances of his separation, which was due to an unrelated medical 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.

The Ph.D. concluded, “it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct or separation to a mental health condition.” Following a review of Petitioner’s AO rebuttal, the Ph.D. did not change or otherwise modify the original AO.

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i. Petitioner requested relief in the form of a discharge upgrade. In short, Petitioner argued that his discharge was largely due to undiagnosed and untreated anxiety and bipolar disorder, which he contended he experienced on active duty. Petitioner further contended his related mental health symptoms impacted his ability for perform his military duties.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants 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 mental health considerations. Contrary to the Petitioner's contentions, the Board noted the record reflected Petitioner's discharge was solely based on his previously undisclosed, pre-existing asthma condition, and was in no way related to any mental health concerns. Notwithstanding, 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 discharge, 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 and discharge was not due to mental health-related conditions or symptoms. The Board determined the record reflected that Petitioner's misconduct was intentional and willful. 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.

However, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not excuse or condone the Petitioner's minor misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. The Board also noted that Petitioner's conduct trait average was sufficient for Honorable discharge consideration. Additionally, the Board noted that the relevant MARCORSEPMAN governing provision (para. 6203.2) stated that the default characterization of service in "condition, not a disability" cases is Honorable, unless a GEN is warranted. Accordingly, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as GEN, and that a discharge upgrade to "Honorable" is appropriate at this time.

Notwithstanding the recommended corrective action below, 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.

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RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action:

That Petitioner's character of service be changed to "Honorable."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty and discharge certificate.

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 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.

2/29/2024

