



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

██████████
Docket No. 6913-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
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 17 Jan 24

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 6 March 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 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 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 Marine Corps and began a period of active duty on 9 June 1988. On 6 February 1989, he received non-judicial punishment (NJP) for disrespect towards a commission officer, and two specifications of disrespect towards a non-commission officer.

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d. Petitioner was issued a counseling warning for financial irresponsibility on 1 June 1989 and was further warned, failure to take corrective action may result in administrative separation or judicial proceedings. Petitioner was issued a second counseling warning, on 21 November 1989, for financial disability with creditors. On 24 July 1990, he was issued a third counseling warning for making a false official statement to the officer in charge. Petitioner received his second NJP, on 19 December 1990, for disobeying an order.

e. Petitioner deployed and participated in Operation Desert Shield from 13 January 1991 until 9 March 1991.

f. Petitioner was issued a fourth counseling warning, on 20 March 1991, for his frequent involvement with military authority and was warned that failure to take corrective action may result in administrative separation or judicial proceedings. Petitioner received his third NJP, on 4 June 1991, for two specifications of failure to go to his appointed place of duty, and writing bad checks on three occasions.

g. Petitioner then received his fourth NJP, on 1 July 1991, for disrespect towards a corporal. On 22 October 1991, he received his fifth NJP, for failure to go to his appointed place of duty.

h. As result, Petitioner was notified that he was being recommended for administrative discharge by reason of pattern of misconduct. Petitioner was advised of, and consulted with military counsel and waived his procedural right to present his case to an administrative discharge board (ADB).

i. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged with an Other Than Honorable (OTH) characterization of service for pattern of misconduct. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 15 November 1991, Petitioner was discharged from the Marine Corps with an OTH characterization of service by reason of misconduct pattern of misconduct.

j. Petitioner contends he was asked to take separation and thought it was a General (Under Honorable Conditions). Petitioner further contended that after his TBI he never had a chance to heal, as he was deployed to Desert Storm. He further contended that his best friend was killed before him and has combat PTSD.

k. For purposes of clemency and equity consideration, the Board noted Petitioner provided official military personnel file documents, a mental health evaluation, two advocacy letters, and a personal statement.

l. 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:

While there is evidence of medical treatment following a head injury, there is no evidence that he experienced long-term symptoms requiring on-going treatment that would be consistent with TBI. He was diagnosed with an alcohol use disorder

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in service, but there is no evidence of diagnosis of another mental health condition in military service. Temporally remote to his military service, a PhD therapist has diagnosed him with PTSD and other mental health concerns that appear unrelated to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given his misconduct that preceded his head injury and deployment and appeared to continue following those events. 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 AO concluded, "it is my clinical opinion there is some in-service evidence of a head injury. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or TBI."

m. In response to the AO, Petitioner provided a statement and documentation that supplied additional clarification of the circumstances of his case. After reviewing the rebuttal evidence, The AO stated in pertinent part:

I have reviewed Petitioner's additional documents. Petitioner has submitted evidence of diagnoses of PTSD and TBI that are temporally remote to his military service. However, there is still insufficient evidence to attribute his misconduct to PTSD and TBI, given misconduct that preceded his TBI and combat deployment and continued following his return from deployment.

The original AO was revised as follows: "There is post-service evidence from the VA of diagnoses of PTSD and TBI that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or TBI."

CONCLUSION

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

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 PTSD and a TBI, 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 TBI and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post-service evidence from the VA of diagnoses of PTSD and TBI that may be attributed to military service.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's

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TBI may have had upon his misconduct. After thorough review, the Board found that Petitioner's TBI did have an effect on his misconduct and the mitigating circumstances of his TBI outweighed the misconduct for which Petitioner was discharged. 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 service 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 outweighed the positive aspects of his military record even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate. Further, the Board determined Petitioner narrative reason for separation and reentry code remain appropriate in light of his record of misconduct. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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 15 November 1991, Petitioner's character of service was "General (Under Honorable Conditions)."

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.

3/12/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]