



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

██████████
Docket No. 7075-23
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) 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 and to make other conforming changes to his DD Form 214.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 29 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, 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, as well as the Petitioner's AO rebuttal submission.
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. The Petitioner originally enlisted in the U.S. Marine Corps and began a period of active service on 28 January 1998. Petitioner's pre-enlistment physical examination, on 13 April 1996,

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and self-reported medical history both noted no neurologic or psychiatric conditions, history, or symptoms. Petitioner reenlisted on 2 October 2002.

d. On 15 May 2003 Petitioner's command issued him a "Page 11" warning (Page 11) for "displaying poor judgment and inappropriate behavior while consuming alcohol and being involved in an altercation at a local establishment off base causing injury" to himself on or about 17 April 2003. The Page 11 expressly advised Petitioner that a failure to take corrective action and any further UCMJ violations misconduct may result in judicial or adverse administrative action, including but not limited to administrative separation.

e. On 10 June 2004, Petitioner pleaded nolo contendere in [REDACTED] to a violation of [REDACTED] Revised Statutes 13-2904.A.1: "Engaging in fighting, violent, or seriously disruptive behavior (a Class 1 misdemeanor)." On 10 June 2004 Petitioner's command issued him a Page 11 documenting his alcohol-related incident. The Page 11 documented his alcohol-related incident as follows:

On 27 March 2003, while intoxicated, you were detained and then arrested by local authorities for suspicion of assault with a deadly weapon. This marks your second documented alcohol related incident within the last 12 months. Your actions are completely unsatisfactory. They demonstrate poor judgment, a lack of maturity, and are prejudicial to the good order and discipline of this command. Alcohol abuse and frequent involvement with civilian authorities is unacceptable for a Marine of your grade, and in particular, as a Green Belt Marine Corps Martial Arts Instructor. Recommended corrective action: do not engage in physical altercations with any Marine or civilian; avoid all arguments that may escalate into physical altercations; you are directed to complete all rehabilitation prescribed by substance abuse counselors; you will enroll in and complete the Anger Management Counseling Program offered by Marine Corps Community Services. Additionally, as a result of this incident, you are advised that your Martial Arts "Instructor" status and additional MOS of 8551 is voided effective immediately. Assistance is available from your chain of command, Marine Corps Community Services office, and the Substance Abuse Control Officer. You are advised that failure to take corrective action or any future alcohol related incident may result in; trial by courts-martial, non-judicial punishment, administrative separation, administrative reduction in rank, and or limitation on further service.

f. On 3 January 2006, Petitioner submitted two (2) separate urine samples as part of a probable cause urinalysis. Both samples tested positive for controlled substances.

g. On 26 April 2006, Petitioner submitted a voluntary written request for an administrative discharge to avoid trial by court-martial for certain offenses that could lead to a Bad Conduct Discharge. These offenses included: (a) one specification of insubordinate conduct, (b) one specification of operating a vehicle while impaired by oxycodone, and (c) the wrongful use of marijuana on divers occasions between 18 December 2005 and 3 January 2006. Petitioner consulted with counsel prior to submitting his request. Petitioner voluntarily acknowledged and

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admitted guilt to all of his charged offenses. Petitioner acknowledged that if his request was approved, the characterization of service as under other than honorable conditions (OTH) is authorized and that he may in fact receive and OTH characterization of service. Petitioner understood that with an OTH discharge he would be deprived of virtually all veterans benefits based on his current period of service, and that he may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the armed forces or the character of the discharge received therefrom may have a bearing. Petitioner also expressly understood that if he received an OTH, he would be administratively reduced in rank to Lance Corporal (E-3). As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a Military Judge. Ultimately, on 15 May 2006, Petitioner was discharged from the Marine Corps with an OTH characterization of service and was assigned an RE-4B reentry code.

h. 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 13 February 2024. The Ph.D. stated in pertinent part:

During military service, the Petitioner was evaluated by military mental health providers and diagnosed with PTSD and depression. While it is reasonable that the Petitioner's problematic alcohol and substance use behavior may have worsened following PTSD and combat exposure, it is difficult to attribute all of his misconduct to PTSD or another mental health condition. The Petitioner denies having engaged in some of his misconduct, claiming that the charges were related to his toxic command climate. Additionally, the Petitioner's pre-service behaviors make it difficult to attribute all of his misconduct to PTSD or other mental health concerns incurred during service. 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 in-service evidence of PTSD and another mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition."

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

i. Petitioner requested liberal consideration and clemency in the form of a discharge upgrade. In short, Petitioner contended that he was suffering from mental health issues caused by combat-related PTSD. Petitioner argued, in part, that the PTSD and symptoms were a causative factor for the behavior underlying his separation and OTH discharge, and he further argued that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service. Petitioner proffered, *inter alia*, his military medical treatment records, post-service mental health treatment records, a VA rating decision, and multiple advocacy letters written on his behalf.

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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 in lieu of trial by court-martial was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone any of the Petitioner's cumulative misconduct, the Board felt that Petitioner's mental health conditions mitigated the misconduct used to characterize his discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors in the misconduct contributing to his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been with an OTH, and that a discharge upgrade to "Honorable," based on mental health considerations, clemency, and leniency is appropriate at this time. Further, based on the same rationale, the Board determined Petitioner's separation should reflect a "Secretarial Authority" discharge.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's original RE-4B reenlistment/reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that his reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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, for the period ending 15 May 2006, be changed to "Honorable," that Petitioner's separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the narrative reason for separation should be changed to "Secretarial Authority."

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

Petitioner be issued an Honorable discharge certificate.

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

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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.

4/19/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]