



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

██████████
Docket No. 7451-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████ USMC

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 13 Feb 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 that his punitive discharge be upgraded to "Honorable" and that his first name be corrected from the incorrect spelling "██████████" to the correct spelling "██████████". Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 8 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). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to his contentions of post-traumatic stress disorder (PTSD).

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.

b. Petitioner enlisted in the Marine Corps under an option to serve as a Marine Security Guard and began a period of active duty on ██████████. He completed his initial training

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and was assigned as a Security Force Marine for [REDACTED]
[REDACTED]

c. Consistent with Petitioner's contentions regarding his service in [REDACTED], he was awarded the Global War on Terrorism Expeditionary Medal during his Marine Corps service.

d. Petitioner was administratively counseled regarding his diagnosis of Adjustment Disorder (AD) on 23 December 2008. He was again counseled regarding his AD on 5 January 2009 and was directed at that time to conform his actions and behavior to common military standards and to comply with his medical treatment plan. Although Petitioner was also formally notified, on 5 January 2009, of administrative separation proceedings for condition, not a disability, with the lowest potential characterization of service as General (Under Honorable Conditions) (GEN), his command subsequently elected to withhold action on this notification to provide Petitioner an opportunity for corrective action and continued service.

e. Subsequently, Petitioner was involved in an incident which resulted in his nonjudicial punishment, on 31 March 2009, for a violation of the Uniform Code of Military Justice (UCMJ) under Article 91 due to disrespect of a staff noncommissioned officer (SNCO). His punishment included reduction to the grade of E-2 and 45 days' restriction and extra duty; however, his forfeitures of pay were suspended.

f. Petitioner received four additional administrative counseling entries between June and October of 2009 for disrespectful speech to an E-4 during a verbal altercation, failure to pass his physical fitness test (PFT), proficiency and conduct marks below 4.0, and, on 23 October 2009, his "recent" diagnosis of AD with Depressed Mood on 11 September 2009.

g. On 14 October 2009, Petitioner was again notified of administrative separation proceedings by reason of convenience of the Government due to condition not a disability – specifically, his AD with Depressed Mood, again with a least favorable characterization of GEN. He elected to waive applicable rights, to include consultation with counsel, and a recommendation for his GEN discharge was forwarded, referencing the medical evaluation with his diagnosis and including a determination that his condition impaired his ability to function effectively within a military environment.

h. Further endorsement of the command recommendation noted that Petitioner had knowingly and unnecessarily put his life at risk on 15 December 2008 by placing his loaded M16A2 in his mouth before seeking help from his chain of command, which resulted in his psychiatric hospitalization. The endorsement also noted that Petitioner's command had afforded him every opportunity to adjust to military lifestyle. Petitioner's separation under honorable conditions was approved on 16 December 2009. He was so discharged, on 23 December 2009, with final average proficiency and conduct marks of 4.1 and 4.1 respectively.

i. On 6 April 2020, Petitioner was issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), which corrected his block one

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information to reflect his correct first name as "[REDACTED]" vice the original spelling as "[REDACTED]" which was entered at the time of his discharge.

j. Petitioner contends first that his first name is spelled incorrectly in his discharge record. He also states that he suffered from a mental health condition during his military service which caused a decline in his performance and resulted in his General (under honorable conditions) characterization of service due to his administrative separation. He describes a primary trauma as having occurred while he served as a security guard in [REDACTED], when a [REDACTED] family purportedly attempted to flee to the territory of the U.S. installation but was caught by the [REDACTED] military and executed, to include the children being brutally decapitated in front of him. He states that he was not permitted to defend them or render aide. He claims that he felt unable to trust anyone due to the nature of the trauma he witnessed and the contributing factor of the rules and regulations which prevented assisting the family. He felt greatly troubled by his inability to help the family in contrast to the protective role he perceived being his responsibility as a Marine. He attributes this incident as the primary precipitant to the suicide attempt or suicidal gesture which resulted in his hospitalization and AD diagnosis and eventual decline in behavior and discharge. In support of his contentions, he has submitted a character letter and his disability rating decision by the Department of Veterans Affairs (VA) in addition to post-discharge medical records.

k. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration which was considered favorable to Petitioner's mental health contentions. Noting his post-discharge diagnoses of PTSD and Major Depressive Disorder which the VA has found to be service-connected, the AO stated in pertinent part: "It is plausible that his misconduct could be attributed to mental health concerns including irritability and decreased motivation, primary associated with depression symptoms." The licensed clinical psychologist concluded with a clinical opinion that:

There is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is evidence to attribute his misconduct to PTSD 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 the application under the guidance provided in references (b) through (e).

In this regard, the Board first noted that Petitioner's request to correct his name is moot given the correction which was already issued by the DD Form 215; however, in light of the relief with respect to his characterization of service, the Board found that this correction should be incorporated into block 1 of his corrected discharge record when it is reissued.

With respect to Petitioner's characterization of service, the Board does not condone his misconduct; however, the Board noted that his performance and conduct was otherwise

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sufficient to qualify for an "Honorable" characterization of service prior to his contended traumatic experience and psychiatric hospitalization, and remained above a 4.0 average even after he was counseled due to being issued marks below that threshold. The Board found that Petitioner appears to have suffered a significant decline in performance and conduct following this incident, in spite of his commands efforts to assist him in his mental health rehabilitation, to include failure to pass his PFT in addition to apparent symptoms of irritability as outlined within the AO. Accounting for these considerations, the Board concurred with the AO that there is sufficient evidence to attribute Petitioner's misconduct to PTSD or another mental health condition during his military service which mitigates the severity of his misconduct. As a result, the Board found that the favorable factors available for consideration outweighed the relatively minor misconduct which preceded Petitioner's convenience of the Government discharge. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief.

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 23 December 2009, "[REDACTED]" was issued an "Honorable" discharge and no other changes.

That Petitioner be issued an Honorable Discharge Certificate.

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

3/27/2024

[REDACTED]