



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

██████████
Docket No. 7912-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD"
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"
(d) PDUSD Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault or Sexual Harassment"

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion dated 15 March 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his discharge be upgraded to Honorable. Enclosures (2) through (4) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 1 May 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 (e). Additionally, The Board also considered enclosure (4), the advisory opinion (AO) dated 15 March 2024. Although Petitioner was provided an opportunity to comment on the AO, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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 Marine Corps on 7 September 2005. On 4 January 2008, Petitioner was formerly counseled on not being eligible for promotion for 18 months due to drug use. On 6 February 2008, Petitioner received non-judicial punishment (NJP) for wrongful use of marijuana. Consequently, he was processed for administrative separation and issued an Other Than Honorable (OTH) characterization of service. However, on 28 July 2008, the separation authority (SA) decided to suspend Petitioner's recommended OTH discharge for 12 months providing he continue to meet appropriate standards of conduct and performance. Subsequently, Petitioner assaulted another Marine. As a result, Petitioner's commanding officer (CO) requested that his OTH discharge suspension be vacated. The SA approved the recommendation and, on 10 September 2008, he was so discharged.

d. In his application, Petitioner asserts that he admitted to having a problem with drugs and alcohol after [REDACTED] but had nowhere to turn.

e. Based on Petitioner's assertion of a PTSD, enclosure (4) was requested and reviewed. It stated in pertinent part:

There is insufficient evidence of TBI that may be attributed to service. Post-service, he has been granted service connection for PTSD. It is possible that assault of another service member could be considered to be a behavioral indicator of irritability associated with undiagnosed PTSD. However, there is insufficient evidence to attribute his use of marijuana to self-medication of PTSD symptoms, given his report in service that it was a single event. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI or other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD."

CONCLUSION:

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

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to continue to characterize Petitioner characterization of service as OTH. Specifically, the Board noted Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in the AO

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

and the post service diagnosis. The Board was able to reasonably conclude that the PTSD condition existed at the time of his misconduct, and subsequently resulted in his OTH discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the 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 re-characterization to a General (Under Honorable Conditions) is now more appropriate.

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 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 and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate.

Finally, the Board concluded that Petitioner's reentry code should remain unchanged based on his unsuitability for further military service. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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) that shows that, on 10 September 2008, his characterization of service was "General (Under Honorable Conditions)," his narrative reason for separation was "Secretarial Plenary Authority," his separation code was "JFF1," and his separation authority was "MARCORSEPMAN 6214."

That no further changes be made to the record.

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 Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

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

5/13/2024

