



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

█
Docket No. 8299-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ 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) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 naval record be corrected to upgrade his characterization of service, change his narrative reason for separation, and change his reentry code in accordance with references (b) through (e). Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 15 April 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 a qualified mental health provider.

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.

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c. The Petitioner enlisted in the United States Marine Corps and began a period of active service on 3 August 1964.

d. Petitioner deployed to [REDACTED] in the [REDACTED] from 8 May 1965 to 6 June 1965.

e. On 7 March 1966, Petitioner was found guilty at Summary Court Martial of violating Uniform Code of Military Justice (UCMJ) Article 86, for a nine-day period of unauthorized absence (UA), and Article 87, for missing movement. He was sentenced to 15 days confinement, forfeitures of \$60 pay per month for one month, and reduction in rank to E-1.

f. From March 1966 to July 1966, Petitioner Participated in counter-insurgency operations in the [REDACTED] with [REDACTED], where he specialized in demolition, mine detection, and mine clearance. Petitioner participated in Operation "[REDACTED]" in [REDACTED] from 10 June 1966 to 30 June 1966.

g. On 12 September 1967, Petitioner was found guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for a 78-day period of UA. He was sentenced to four months confinement, forfeitures of \$60 pay per month for four months, and reduction in rank to E-2.

h. On 2 April 1968, Petitioner was found guilty at SPCM of violating UCMJ Article 86, for a 107-day period of UA. He was sentenced to six months confinement, forfeitures of \$60 pay per month for six months, and a Bad Conduct Discharge (BCD). On 1 May 1968, the Board of Review suspended the BCD for the period of confinement plus six months thereafter.

i. On 17 June 1968, Petitioner received mental health treatment and was diagnosed with "Personality, Passive-Aggressive #3211; with some aggressive traits."

j. On 19 August 1968, Petitioner received a psychological evaluation after a suicide attempt by cutting his wrist and ingesting 20 Ibuprofen. It was diagnosed as "Depressive Reaction, immature youth, mild, not disqualifying."

k. On 6 December 1968, Petitioner was found guilty at SPCM of violating UCMJ Article 86, for a 64-day period of UA. He was sentenced to six months confinement, forfeitures of \$70 pay per month for six months, reduction in rank to E-1, and a BCD (the previous suspension was vacated).

l. On 5 May 1969, Petitioner was discharged from the Marine Corps due to his misconduct with a BCD as adjudged by the court and assigned an RE-4 reenlistment code.

m. On 23 June 1977, per Presidential Proclamation #4313/Clemency Discharge, Petitioner was given credit for satisfactory completion of alternative service.

n. Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) as a result of his combat service in Vietnam, which led to his misconduct and ultimately his discharge. Petitioner describes his combat trauma and his struggle to assimilate back to normal life post-deployment.

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He asserts that he has found healthier ways to cope with his trauma and requests consideration of his upgrade request.

o. In connection with Petitioner's assertion that his mental health conditions mitigate the circumstances that led to his discharge character of service, the Board requested and reviewed an Advisory Opinion (AO) provided by a licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued an AO dated 5 April 2024. The AO stated in pertinent part:

The Petitioner submitted a 21-page psychological evaluation dated August 2023 whereby the psychologist diagnosed PTSD due to combat experiences in [REDACTED]. The evaluator further determined that the Petitioner's UA could have been due to undiagnosed PTSD symptoms. He submitted a note from UC Davis Health System dated August 2006 where the Petitioner presented complaining of depression, however it was determined that a more accurate diagnosis was PTSD. The Petitioner shot himself in the leg in 1987. There is not much information about this post-service event, however his wife indicated that she believes it was mental health-related. Although there is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, it is possible that his self-harm and unauthorized absences could have been due to symptoms of undiagnosed PTSD at the time. The Petitioner described a highly kinetic and traumatic deployment experience whereby he feared for his own life and witnessed fellow Marines' injuries and deaths. Persistent avoidance and negative alterations in mood could have accounted for his UA's and suicide attempt.

The Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition"

CONCLUSION:

After careful review and consideration of all of the evidence of record, the Board determined that partial relief is warranted in the form of upgrading Petitioner's characterization of service from a punitive BCD to an administrative General (Under Honorable Conditions) (GEN), and changing his narrative reason for separation to "Secretarial Authority" with corresponding codes.

Because Petitioner based his claim for relief upon mental health conditions, his application was reviewed in accordance with the guidance of references (b) through (e). Accordingly, the Board applied liberal consideration to Petitioner's contention. In this regard, the Board concluded that Petitioner appears to have suffered from undiagnosed mental health conditions during his military service, which is related to his post-service diagnoses of combat related PTSD. The Board felt that the Petitioner submitted sufficient evidence to support his contention that his misconduct and subsequent mental health conditions were directly related to his combat exposure during military service. The Board felt that Petitioner's statement was sufficiently detailed and was further supported by medical treatment notes. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's diagnosed service

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connected mental health condition was a possible causative factor for most of the misconduct underlying his discharge and therefore mitigated his conduct. After viewing the nexus between Petitioner's trauma and his subsequent misconduct, the Board concluded that no useful purpose is served by continuing to designate Petitioner's separation under a Bad Conduct Discharge, and that an upgrade to GEN conditions is appropriate.

In keeping with the letter and spirit of the Wilkie Memo, the Board also determined that continuing to label the Petitioner's basis for separation as "misconduct" would be unjust and serves no continued purpose. The Board felt that due to Petitioner's combat service and the significant passage of time, changing the narrative reason for separation to a more general basis would be appropriate. Specifically, the Board supported a grant of relief with respect to changing Petitioner's narrative reason for separation to "Secretarial Authority" with the corresponding separation code and authority.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable (HON) discharge. The Board highlighted that an HON discharge is appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even though flawless service is not required for an HON discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's nine-day period of UA that occurred prior to his deployment to [REDACTED].

The Board also concluded that Petitioner's reenlistment code should remain unchanged. Although the Board found that the mitigating information warrants a characterization upgrade and change to the narrative reason for separation, the fact that he was not recommended for reenlistment remains accurate and in compliance with all Department of the Navy and Marine Corps 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 be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 5 May 1969, his character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the separation authority was "MARCORSEPMAN par. 6214," and the separation code was "JFF1."

That no further changes be made to the record.

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.

4/24/2024

