



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

██████████
Docket No. 8383-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, 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) 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 and change his narrative reason for separation, separation authority, and separation code be changed to reflect "Secretarial Authority," and that his reentry code be changed to allow reenlistment.

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 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 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.

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

c. The Petitioner enlisted in the Marine Corps and began a period of active service on 4 February 1974.

d. On 18 March 1974, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a lawful order. He did not appeal this NJP.

e. On 29 March 1974, Petitioner was found guilty at his second NJP for violating UCMJ Article 86, for a period of unauthorized absence (UA). He did not appeal this NJP

f. On 13 May 1974, Petitioner was found guilty at his third NJP for violating UCMJ Article 92, for failure to obey a lawful order. He did not appeal this NJP.

g. On 19 July 1974, Petitioner was found guilty at his fourth NJP for violating UCMJ Article 86, for a period of UA, and Article 92, for failure to obey a lawful order. He did not appeal this NJP.

h. On 2 August 1974, Petitioner received his fifth NJP for violating UCMJ Article 134, for breaking restriction. He did not appeal this NJP.

i. On 4 November 1974, Petitioner received his sixth NJP for violating UCMJ Article 86, for a period of UA. He did not appeal this NJP.

j. On 19 June 1975, Petitioner was found guilty at his seventh and final NJP for violating UCMJ Article 86, for a period of UA, and Article 91, for disobeying the order of a senior non-commissioned officer. He did not appeal this NJP.

k. On 17 May 1976, Petitioner began a period of UA, and remained absent until his return to military control on 5 October 1976. Upon his return, he refused NJP, instead requesting discharge for the good of the service to avoid trial by court martial on 15 November 1976. Petitioner's request included a hand-written statement wherein he explained, "I am applying for an undesirable discharge. ... military life has never and never will be right for me. My up to date USMC life is very bitter with hatred. I know I'm not wanted and I don't want this life either. ... I don't need the USMC and they don't need to waste any more time on me.... I have abandoned any hope or desire to earn an honorable or general discharge."

l. On 15 December 1976, Petitioner was discharged from the Marine Corps in lieu of trial by court martial with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

m. In his request for relief, Petitioner contends that he incurred PTSD from extreme racial discrimination experienced during military service. In support of his request, Petitioner provided a Department of Veterans Affairs (VA) Compensation and Pension (C&P) examination dated March 2023 listing a diagnoses of PTSD and Major Depressive Disorder (MDD), Recurrent Episode, Severe. He also provided an evaluation by a civilian psychologist dated September

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

2019, listing diagnoses of PTSD, MDD, Panic Disorder, and Agoraphobia, expressing the opinion that these “conditions are linked to...[his] traumatic experiences while serving in the Marine Corps.” Petitioner requests that the Board view his mental health conditions as a mitigating factor to the misconduct and change his record of service accordingly.

n. 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 22 February 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns that are attributed to his military service. While some of his misconduct may be attributed to PTSD symptoms incurred from fear of harm by his superior, it is difficult to attribute all of his misconduct to PTSD symptoms, particularly given the chronic pattern of his disobedience throughout his service. It is possible that his some of his UA could be attributed to PTSD avoidance due to fear of personal safety, but he also attributed UA to assisting his girlfriend. 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 post-service evidence from the VA of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition.”

o. On 20 March 2024, in response to the AO, Petitioner explained that he has been receiving treatment over time; however, the treatment records more contemporaneous to his service do not exist anymore due to records retention standards. He asserts that it is common for there to be a delay in seeking assistance for mental health conditions due to the stigma associated with such issues, especially back in the 1970s. He points to his SILT request as evidence of how dejected he was feeling at the time of his separation.

p. The Ph.D. reviewed the rebuttal statement and, as no new medical evidence was provided, the original AO remained unchanged.

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 OTH to General (Under Honorable Conditions) (GEN) with corresponding changes to his

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

narrative reason for separation, separation authority, and separation code.

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 diagnosis of 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 the racial harassment that he suffered while serving in the military. 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 connected mental health condition was a possible causative factor for at least some 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 characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to GEN conditions is appropriate.

The Board also concluded that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to reflect "Secretarial Authority," as the misconduct committed by the Petitioner was mitigated by his mental health condition due to service connected PTSD and racial discrimination.

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 service member'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 frequency of Petitioner's misconduct and the substantial length of his final period of UA.

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.

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows, on 15 December 1976, his character of service was "General (Under Honorable Conditions)," his 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.

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.

