



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

██████████
Docket No. 9109-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████
██████████ 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 12 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, 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 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.

c. The Petitioner enlisted in the U.S. Marine Corps and began a period of active service on 22 October 2022. Petitioner's pre-enlistment physical examination, on 20 July 2001, and self-

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reported medical history both noted no neurologic or psychiatric conditions, history, or symptoms.

d. On 29 December 2003, Petitioner commenced a period of unauthorized absence (UA) that terminated on 28 January 2004 with his surrender to military authorities. On 8 April 2004, Petitioner received non-judicial punishment (NJP) for his 30-day day UA. Petitioner did not appeal his NJP.

e. On 13 April 2004, Petitioner's command issued him a "Page 11" warning (Page 11) documenting his NJP. The Page 11 expressly advised Petitioner that a failure to take corrective action and any further misconduct may result in judicial or adverse administrative action, including but not limited to administrative separation. However, on 18 May 2004, Petitioner received NJP for failing to obey a lawful order or regulation. Petitioner did not appeal his NJP.

f. On 9 December 2004, pursuant to his guilty plea, Petitioner was convicted at a Special Court-Martial (SPCM) of the wrongful use of a controlled substance (cocaine) on divers occasions. Petitioner was sentenced to confinement for sixty (60) days, a reduction in rank to the lowest enlisted paygrade (E-1), and to be discharged from the Marine Corps with a Bad Conduct Discharge (BCD). On 14 February 2005, the Convening Authority (CA) approved the SPCM sentence as adjudged, except the CA mitigated the term of confinement to ninety (90) days of hard labor without confinement. Following the completion of appellate review of Petitioner's case, on 20 August 2007, Petitioner was discharged from the Marine Corps with a BCD and assigned an RE-4B reentry code.

g. On 4 April 2017, the Naval Discharge Review Board (NDRB) denied Petitioner's initial discharge upgrade application. The NDRB determined that Petitioner's discharge was proper as issued and that no change was warranted. On 17 June 2022, this Board denied Petitioner's discharge upgrade request.

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 1 April 2024. The Ph.D. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation.

Temporally remote to his military service, he has received a diagnosis of PTSD that has been attributed to combat service. It is possible that UA and disobedience could be attributed to unrecognized symptoms of avoidance and irritability associated with undiagnosed PTSD. Temporally remote to his military service, a civilian psychologist has expressed the opinion that his substance use was related to shame associated with "moral injuries" incurred during his combat service.

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Although his in-service description of his substance use is not consistent with self-medication (i.e., impulsive use while intoxicated), it is possible that he was not able to clearly articulate his reason for use until after reflections from mental health treatment and with the emotional distance of the passage of time. 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 strengthening the opinion.

The Ph.D. concluded, "it is my clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is some post-service evidence to attribute his misconduct to PTSD."

i. In response to the AO, Petitioner provided a memorandum from the [REDACTED] Department of Veterans Affairs.

j. Petitioner requested liberal consideration and clemency in the form of a discharge upgrade. In short, Petitioner argued that his BCD was the result of certain mental health issues. Petitioner contended that he was bullied and assaulted repeatedly during service by fellow service members, and was ordered to participate in the inhumane treatment of Iraqi detainees, all of which contributed to his PTSD and moral injury. Petitioner further contended that his mental health symptoms negatively affected his judgment and decision-making, and that he turned to drugs to manage his mental health issues and symptoms. Petitioner requested that the Board grant liberal consideration that the behavior leading to his discharge was an attempt to self-medicate his PTSD symptoms and the moral injury he suffered in service. Petitioner proffered, inter alia, post-service mental health treatment records, and multiple advocacy letters written on his behalf.

CONCLUSION:

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

The Board initially determined that Petitioner's punitive discharge awarded at his SPCM 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 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 a BCD, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN), is appropriate at this time. In addition, consistent with this finding, the

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Board determined it was in the interests of justice to change Petitioner's separation to reflect a "Secretarial Authority" discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an Honorable discharge characterization. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board determined the record reflected that Petitioner's misconduct was intentional and demonstrated he was unfit for further service. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner only merits a GEN characterization of service and no higher.

Lastly, 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 Department of the Navy directives and policy at the time of his punitive discharge. Ultimately, the Board determined that 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 20 August 2007, be changed to "General (Under Honorable Conditions)," 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.

No further change is required.

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.

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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.

4/16/2024

