



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

[REDACTED]  
Docket No. 9626-23  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 Aug 17 (Kurta Memo)  
(c) Petitioner's Official Military Personnel Folder  
(d) Department of Defense Instruction 1332.18

Encl: (1) DD Form 149 w/attachments  
(2) Physician Advisor, Board for Correction of Naval Records, ltr NR20230009626 dtd 19 July 2024

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his discharge be changed to a service disability retirement.
2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 25 July 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of naval records, and applicable statutes, regulations, and policies. The Board also considered enclosure (2), an advisory opinion (AO) from a qualified medical professional. The AO was considered favorable toward Petitioner.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation 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. A review of reference (c), reveals that Petitioner enlisted in the Marine Corps Reserve on 12 June 2001. During his service, from time to time, Petitioner served periods of active duty. On 4 January 2005, Petitioner mobilized in support of [REDACTED] during which he worked in mortuary affairs. His period of active duty ended on 3 January 2006 and, the next day, he commenced another period of active duty. Petitioner began to seek treatment for mental health conditions that he exhibited, describing them as a result of his service in mortuary affairs. On 21 February 2008, while he was still on active duty, Petitioner's command wrote to the Bureau of Medicine and Surgery (BUMED) recommending that Petitioner be discharged,

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explaining that Petitioner suffered from post-traumatic stress disorder (PTSD) and depression as a result of his service in mortuary affairs in [REDACTED]. The same day, Petitioner's command prepared a non-medical assessment of Petitioner, stating that he had "been diagnosed with PTSD and depression as a result of his service as a Mortuary Affairs Specialist during [REDACTED]. In addition, he has a significant weight control problem. As a selected Marine Corps Reservist, I have had little contact with this Marine and he has gone through periods of being non-compliant with his treatment. Accordingly, I feel that he is unfit for further service and recommend that he discharged from the Marine Corps Reserve."

c. On 10 March 2008, BUMED wrote to Petitioner's commanding general advising that Petitioner was not physically qualified for retention in the Marine Corps Reserve due to PTSD and depression. On 20 March 2008, Commander, Marine Corps Forces Reserve provided a first endorsement on the BUMED letter directing that separation processing be initiated with respect to Petitioner. Petitioner's complete administrative separation documents are not available in his OMPF, but his Certificate of Discharge or Release from Active Duty (DD Form 214) reflects he was discharged, on 25 April 2008, due to "Disability (other)."

d. In his petition, Petitioner requests to have his discharge changed to service disability retirement. In support of his request, he contends that he served in [REDACTED] from 2005 to 2006 where he suffered combat related disabilities as a result of serving as a Mortuary Affairs Specialist in [REDACTED]. He contends that he was responsible for the search, recovery, and processing of all dead bodies in [REDACTED] area.

e. In order to assist it in reviewing his petition, the Board obtained enclosure (2). The AO explained that clinical records indicated he did not have any mental health symptoms prior to his 2005 deployment to Iraq, and that his symptoms began to manifest well after his return from deployment. The AO further explained that Petitioner reported his increasingly disruptive psychological symptoms to his command after his return from deployment and that his command reacted in a supportive manner, taking steps to ensure he had access to benefits and medical resources.

f. The AO opined that it was likely that Petitioner's inability to maintain weight standards were "exacerbated by his psychological symptoms as a result of his PTSD and depression to include apathy, amotivation, lack of physical activity, and overeating." In addition, the "medications he was taking to treat his conditions are known to have side effect of weight gain and sedation, likely further contributing to his inability to maintain weight standards." The AO also noted that the NMA indicated Petitioner was unfit for further service due to PTSD and depression as a result of his service as a Mortuary Affairs Specialist, and "did not consider him worldwide assignable, did not feel he had good potential for continued service in his present physical and mental condition, and recommended against retention on Permanent Limited Duty Status if found unfit." In addition, "Chief, BUMED found him NOT physically qualified for retention due to post traumatic stress disorder and depression and deferred his final disposition to an administrative determination of suitability for service."

g. The AO recommended that, should Petitioner's request for relief be granted and recommend a correction of Petitioner record as follows to be applied to effective 25 April 2008:

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Unfit for the following condition with placement on the Permanent Disability Retired List (PDRL):

1. Post Traumatic Stress Disorder, VA Code 9411, rated at 30%, permanent and stable, combat related (CR), combat zone (CZ).

This results in a combined rating of 30%.

h. The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been referred to the Disability Evaluation System for determination of unfitness and possible medical retirement."

## CONCLUSION

Upon review and consideration of the evidence of record, the Board concluded that there was an error in Petitioner's naval record that warrants relief. Specifically, the Board found that Petitioner should have been evaluated within the Disability Evaluation System (DES) while he was in service. In order to correct this error, the Board recommended that Petitioner be retroactively placed on the PDRL. In reaching its decision, the Board substantially concurred with the findings of the AO, which the Board found to be well-reasoned and supported by substantial medical and service record documentation. The Board observed that there was no indication that Petitioner had mental health conditions prior to his service on deployment. Thereafter, he exhibited signs of a mental health condition, which was acknowledged as unfitting by both his chain of command, in its NMA, as well as BUMED.

The Board concurred with the finding of relief recommended by the AO, with an exception. In lieu of a finding of 30% disability rating, the Board determined that 50% was appropriate in light of reference (c), which, at Section 8.2 requires the Secretary of the Navy to apply Sections 4.129 and 4.130 of Title 38, Code of Federal Regulations for disposition of service members found unfit because of a behavioral disorder due to traumatic stress. According to that provision, as relevant here, "[w]hen a behavioral disorder develops on active duty because of a highly stressful event severe enough to bring about a Service member's release from active military service, the Secretary of the Military Department concerned will:

\* \* \*

b. For all other Service members, assign a rating of at least 50 percent to the behavioral disorder due to traumatic stress, combine ratings in accordance with the VASRD, temporarily retire the Service member for disability, and schedule an examination to determine whether a change in rating and disposition is warranted. The reexamination will be scheduled within six months from the date of placement on the TDRL, but completed no earlier than 90 days after placement on the TDRL.

The Board recognized that the foregoing provision requires a reexamination within six months of placement on the TDRL. The Board did not recommend that such reexamination take place

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based on the passage of time since Petitioner's discharge from active duty and as a matter of injustice. Thus, in respecting the reference (c) provision above, as well as the fact that the Board recommends Petitioner be placed directly on the PDRL and not on the TDRL, the Board reasoned that a 50% disability rating was appropriate.

The Board also directed associated relief as described more fully below in its recommendation.

#### RECOMMENDATION

In view of the above, the Board directs the following corrective action.

That Petitioner be placed on the PDRL as unfit effective 25 April 2008 for the following conditions:

1. Post Traumatic Stress Disorder, VA Code 9411, rated at 50%, permanent and stable, combat related (CR), combat zone (CZ).

This results in a combined rating of 50%.

The Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) with changes as follows: narrative reason for separation: Disability, Permanent; separation program designator: as appropriate; reentry code: RE-3P.

The DFAS shall audit Petitioner's pay account for payment of any lawful monies owed.

A copy of this decision letter shall be placed in Petitioner's Official Military Personnel Folder.

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.

8/13/2024

