



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

█
Docket No. 9928-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 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
(3) Advisory Opinion of 19 April 2024

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 his discharge be upgraded to "Honorable."

2. The Board consisting of , █, reviewed Petitioner's allegations of error and injustice on 29 April 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 his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional.

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. Petitioner enlisted in the Marine Corps and began a period of active duty on 19 June 1978. On 9 February 1979, Petitioner was evaluated by medical after sustaining a head injury while playing football and was diagnosed with tension headaches. On 20 February 1979, Petitioner

was evaluated by a mental health specialist and diagnosed with situational maladjustment problem along with situational stress resulting in psychosomatic symptoms. On 26 April 1979, Petitioner began a period of unauthorized absence (UA) which lasted 33 days. As a result of the foregoing, Petitioner was referred to trial by special court martial (SPCM). On 21 June 1979, Petitioner requested an Other than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. On 26 June 1979, the Staff Judge Advocate recommended the approval of the Petitioner's request for an OTH discharge characterization in lieu of trial by court martial. Ultimately, the separation authority approved an OTH discharge characterization in lieu of trial by court martial. On 20 July 1979, Petitioner was so discharged.

d. Post discharge, Petitioner to the Naval Discharge Review Board (NDRB) for relief. On 13 February 1980, the NDRB denied the Petitioner's request after concluding his discharge was proper as issued.

e. Petitioner contends his goal was to become a Marine, serve his country, train for a trade, and make a career serving in the Marine Corps. Petitioner claims he made a wholehearted decision to be the best Marine but he was bullied after he revealed illegal drug possession of a fellow Marine to his chain of command. Petitioner claims the trauma created by the bullying affected him mentally and physically, to the point that he began experiencing anxiety and digestive issues. Petitioner states he felt isolated, was in constant fear, and developed headaches due to his mental health condition. After Petitioner sent a letter to his congressman and his commanding officer, matters became worse for him. Petitioner felt overwhelming mental anguish and decided to go UA after a period of leave expired. Petitioner states he was discharge with an OTH, no one gave him a reason why he was discharged, and his uniform was taken away. In conclusion, Petitioner is seeking to get a discharge upgrade with the intent to be able to receive veterans' benefits.

f. For purposes of clemency and equity consideration, the Board noted Petitioner did not provided supporting documentation describing post-service accomplishments or advocacy letters.

g. In connection with Petitioner's assertion that he was suffering from MHC during military service, which might have mitigated the circumstances of his discharge, the Board requested and reviewed the AO. The AO stated in pertinent part:

During military service, the Petitioner was properly evaluated by a military psychologist and his difficulty adjusting was noted, which could be considered similar to a contemporary Adjustment Disorder diagnosis. He has provided no additional medical evidence in support of his claims. It is possible that his UA was related to his mental health concerns and difficulty adjusting to the military. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

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The AO concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is post-service evidence from the Petitioner to attribute his misconduct to a mental health condition related to harassment."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions. However, in light of references (b) through (e), after reviewing the record holistically, given the totality of the circumstances, and as a matter of liberal consideration and clemency, the Board concluded Petitioner's discharge characterization should be upgraded to "General (Under Honorable Conditions)." In making this finding, the Board substantially concurred with the AO that there is post-service evidence from the Petitioner to attribute his misconduct to a mental health condition related to harassment.

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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's basis for separation and separation code remain appropriate in light of his misconduct. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 20 July 1979, indicating his character of service as "General (Under Honorable Conditions)."

No further changes be made to Petitioner's record.

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

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[REDACTED]

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.

5/16/2024

