



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

█
Docket No. 10098-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo, 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo, 25 Jul 18 (Wilkie Memo)
(d) PDUSD Memo, 4 Apr 24 (Vazirani Memo)
(e) Petitioner's Official Military Personnel File

Encl: (1) DD Form 149
(2) Advisory Opinion dtd 31 Jul 24
(3) Rebuttal dtd 12 Aug 24

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 by granting a medical discharge and upgrade of his characterization of service from Other Than Honorable (OTH).

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 5 September 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 the naval records, and applicable statutes, regulations, and policies to include references (b) through (d). In addition, the Board considered enclosure (2), an advisory opinion (AO) furnished by a qualified medical professional, and enclosure (3), Petitioner's rebuttal response.

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the United States Marine Corps and began active duty service on 23 September 1983. Petitioner had two periods of unauthorized absence (UA) in 1986, one from

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2 April to 11 April and the second from 13 April until 7 June. Petitioner's command referred him to court-martial for the two periods of UA and his past disciplinary history was noted as non-judicial punishment (NJP) for larceny of government property and a second NJP for failure to go/resisting apprehension. On 14 July 1986, Petitioner requested to be separated from service as he had "drifted so far away from functioning to benefit myself or the Corps," *Id.* at 425. On 22 July 1986, the Staff Judge Advocate, [REDACTED], recommended approval of the separation in lieu of trial by court martial for the Petitioner. On 14 August 1998, Petitioner was discharged from the Marine Corps. His Certificate of Release or Discharge from Active Duty (DD Form 214) states an Other Than Honorable (OTH) characterization of service and Separation in Lieu of Trial by Court Marital as the narrative reason for separation.

c. Upon returning home, Petitioner, at the behest of his parents, was evaluated by a psychiatric licensed care social worker who diagnosed Petitioner with Dysthymic Disorder and Paranoid Personality Disorder. In 2003, Petitioner submitted a petition to the Board requesting a characterization of service upgrade, contending that he was suffering from the effects of a mental disorder that resulted in the misconduct. On 11 December 2003, the Board denied the request noting there was no evidence in the records that Petitioner lacked mental responsibility at the time Petitioner committed the UA offenses.

d. On 10 October 2007, the state of [REDACTED] granted Petitioner's mother Guardianship of Petitioner. Included in the request is a letter from Petitioner's psychiatrist stating Petitioner was diagnosed with Schizophrenia. In June 2008, Petitioner's mother requested reconsideration for the discharge upgrade, the Board denied stating the new evidence was not material. Petitioner's mother applied to the Board for reconsideration again in 2020. Petitioner's mother included a 2 January 2019 Department of Veterans Affairs (VA) letter stating Petitioner may be eligible for services from the VA. She provided a personal statement detailing her concerns for her son's post-discharge diagnoses of Dysthymia, Paranoid Personality Disorder, and Schizophrenia and his troubled history post-discharge from those conditions. Petitioner's mother also documented that when he returned home he was underweight and disoriented. There is no record of any action taken on this application for reconsideration.

e. Petitioner's mother requests Petitioner receive a "mental health discharge." She contends at the time of his separation, Petitioner exhibited signs of mental illness but was not properly evaluated for a mental health disorder. Petitioner's mother argues the OTH characterization of service is unjust as he was mentally ill at the time of separation, and he is currently being denied treatment from the VA due to his OTH. Petitioner's parents provided correspondence between themselves and Petitioner's Commanding Officer in July 1986. Their letter to the CO documented that in 1986 they "noticed a change" in their son and that "he was deeply troubled." The CO's response noted Petitioner had 47 separate recorded visits to sick call. To support their contentions, Petitioner's mother provided a 4 October 2012 Mental health assessment, which was a result of a court-order following charges of False Statement on Criminal History Consent and Attempted Possession of a Firearm by an Involuntarily Committed Person.

f. The Board sought an advisory opinion (AO) from a licensed clinical psychologist regarding Petitioner's contentions. The physician reviewed Petitioner's records and noted Petitioner's diagnosis of Schizophrenia was temporally distant to his military service and he was

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initially diagnosed in 1986 with a personality disorder, a condition that would not have warranted a physical evaluation board per Navy regulation.

g. In response to the AO, Petitioner's mother reiterated her recollection and contemporaneous observations from the time of Petitioner's discharge from the Marine Corps and subsequent mental health evaluations and treatment. Petitioner's mother also advised of her family history of schizophrenia. See enclosure (3).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an injustice warranting partial relief. Specifically, with consideration of the AO and Petitioner's mother's statement, and purely as a matter of clemency based upon the guidance in references (b) through (d), the Board determined Petitioner's record warrants a characterization upgrade to General (Under Honorable Conditions).

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.

Additionally, the Board concluded Petitioner's assigned reason for separation and reentry code remain appropriate in light of his record of misconduct and unsuitability for further military service. Specifically, regarding Petitioner's request for a medical discharge, the Board concurred with the AO that there was insufficient evidence to demonstrate Petitioner warranted referral for a medical separation in 1986. Moreover, the Board determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Further, the Board noted that Petitioner was ineligible for disability processing due to his misconduct based administrative separation that resulted in an OTH characterization of service. 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 recommends the following corrective action:

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 14 August 1986, reflecting that his characterization of service was "General (Under Honorable Conditions)."

That a copy of this report of proceedings be filed in Petitioner's naval record.

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That no further changes be made to 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

9/26/2024

