



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

██████████
Docket No. 10175-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

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) Subject's naval record (excerpts)
(4) Advisory Opinion of 24 Apr 24

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) requesting an upgrade to his discharge characterization. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 10 June 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 (e). The Board also considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, he chose not to do so.

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.

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c. Petitioner enlisted in the Marine Corps on 25 November 1975 and began a period of active service. He received an Honorable discharge on 29 November 1978 and immediately reenlisted on 30 November 1978. There is no DD Form 214 in Petitioner's record documenting his first enlistment period.

d. On 25 January 1980, Petitioner received non-judicial punishment (NJP) for dereliction in the performance of his duties by sleeping on post, and for disobeying a lawful order to have his hair cut. On 4 February 1980, Petitioner commenced a period of unauthorized absence (UA) that ended with his apprehension by military authorities on 6 May 1980.

e. On 23 May 1980, Petitioner was convicted by a Special Court-Martial for violating Uniform Code of Military Justice (UCMJ) Article 86, for his aforementioned UA, Article 92, for wrongful possession of marijuana, and Article 80, attempted violation of lawful order.¹ He was sentenced to receive a Bad Conduct Discharge (BCD), to be confined at hard labor for two months, and to be reduced in grade to E-1. The Convening Authority later reduced confinement at hard labor to 45 days.

f. On 23 October 1981, a supplementary SPCM order was issued setting aside the findings of guilty for an additional charge in the case, affirming the remaining findings, and re-assessing and affirming the sentence.² The sentence was then ordered executed.

g. Subsequent to his discharge, on 26 October 2020, the Veterans' Affairs Administration (VA) issued a Decision on Character of Discharge Determination for the Petitioner's period of active duty service between 30 November 1978 and 6 November 1981, finding that the Petitioner was not entitled to healthcare benefits for that period of service.

h. Petitioner contends he got in trouble at [REDACTED] because his "mind was not right," from contaminated water at [REDACTED].

i. As part of the Board's review, the Board considered enclosure (4). The AO states 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. He has provided evidence of treatment for a mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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.

¹ The specific nature of this charge is not available in the record.

² The portion of the charge sheet containing the additional charge is missing from the record and, thus, details of the additional charge are unknown.

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The AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief. Specifically, Petitioner's record did not contain a DD Form 214 documenting his first enlistment period and requires correction.

Regarding Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his previously discussed contention. For purposes of clemency and equity consideration, the Board considered the evidence submitted in support of Petitioner's petition.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that is insufficient evidence to attribute his misconduct to a mental health condition. As explained in the AO, 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. Additionally, the evidence of treatment for a mental health condition that Petitioner provided is temporally remote to his military service and appears unrelated. Therefore, the Board determined Petitioner was mentally responsible for his misconduct. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner a discharge upgrade or granting an upgrade as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

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

RECOMMENDATION

That Petitioner be issued a new DD Form 214 indicating his Honorable service for the period of 25 November 1975 through 29 November 1978.

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That no further changes be made to Petitioner's 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 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.

6/25/2024

[REDACTED]