



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

[REDACTED]
Docket No. 10594-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED] USMC

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)
(d) USD Memo, 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo, 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 8 May 24

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

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 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). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) furnished by qualified mental health provider. 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 and began a period of active service on 20 July 1999.

d. On 18 April 2001, Petitioner was charged at special court-martial (SPCM) with violating Article 112a of the Uniform Code of Military Justice (UCMJ) for wrongful use, possession, and distribution of marijuana.

e. On 1 May 2001, Petitioner entered into an agreement to plead guilty to wrongful use of marijuana at non-judicial punishment (NJP) in lieu of the aforementioned trial by court-martial. As part of this agreement, Petitioner agreed to waive his right to an administrative discharge board (ADB).

f. Subsequently, pursuant to the aforementioned agreement, on 4 May 2001, Petitioner received non-judicial punishment (NJP) for wrongful use of marijuana. His punishment included reduction in paygrade to E2, 45 days of restriction with hard labor, and forfeiture of \$584 pay per month for two months.

g. On 15 May 2001, Petitioner was notified of administrative separation processing by reason of misconduct due to drug abuse. He consulted with counsel and, again, pursuant to the aforementioned agreement, waived his right to an ADB. His commanding officer thereafter recommended an under Other Than Honorable (OTH) discharge by reason of misconduct, drug abuse. The discharge authority approved the recommendation, and on 4 June 2001, he was so discharged.

h. Petitioner contends he was prosecuted without evidence, that the person he was charged with was found not guilty despite the same manufactured evidence, and that he was not previously aware of his ability to request an upgrade. For purposes of clemency and equity consideration, he provided a PTSD Screen conducted on him, on 19 September 2023, by a board-certified psychiatrist resulting in a diagnosis of "Post traumatic stress disorder, serve, chronic."

i. As part of the Board's review, the Board considered enclosure (4). The AO states in pertinent part:

Records indicate the Petitioner was properly evaluated during his enlistment and received a diagnosis of personality disorder. This diagnosis would be based on observed behaviors during his period of service, the information he chose to disclose, and the psychological evaluation performed. He has submitted evidence of a civilian diagnoses of PTSD and Alcohol Use Disorder that are temporally remote and attributed to his military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given his denial of problematic substance or alcohol use behavior in service. Additional records (e.g., in-service or 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.

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The AO concluded, "it is my clinical opinion there is post-service evidence from a civilian psychiatrist of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

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, which subsequently resulted in an OTH discharge. Further, the Board was not persuaded by his contentions regarding the lack of evidence regarding his guilt; noting that he pleaded guilty to the misconduct that formed the basis for his OTH. However, in light of references (b) through (e), to include the mixed AO, after reviewing the record liberally and holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded 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 determined his narrative reason for separation, separation authority, separation code, and reentry code remain appropriate in light of his misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION

That Petitioner be issued a new DD Form 214, for the period ending 4 June 2001, indicating his character of service as "General (Under Honorable Conditions)."

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.

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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 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.

7/25/2024

