



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

██████████
Docket No. 10727-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 10 May 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 for an upgrade of his characterization of service.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 10 July 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, applicable statutes, regulations, and policies, to include references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional, that was considered favorable toward Petitioner.

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 regulation 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 U.S. Marine Corps and began a period of active duty on 1 August 1983. Petitioner subsequently completed this enlistment with an Honorable characterization of service on 6 April 1987 and immediately reenlisted.

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

d. On 15 March 1988, he received non-judicial punishment (NJP), for two specifications of charging personal calls to a government phone. Petitioner was issued a counseling warning for unauthorized use of government phone and was further warned, failure to take corrective action may result in administrative separation or judicial proceedings.

e. On 28 August 1989, Petitioner was issued a second counseling warning for failure to pay just debts, irresponsible behavior, and personal relationships with a superior commissioned officer. Petitioner was issued a third counseling warning for his frequent involvement with civilian/military authorities. On 12 July 1990, Petitioner received his second NJP, for uttering checks that did not have sufficient funds for payment.

f. Unfortunately, documents pertinent to the Petitioners administrative separation are not in the official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioners Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Marine Corps on 14 November 1990 with an Other Than Honorable (OTH) characterization of service, narrative reason for separation is "Misconduct: Pattern of Misconduct," separation code is "HKA1," and reenlistment code is "RE-4."

g. Petitioner previously applied to this Board for an upgrade to his characterization of service and was denied on 25 July 2018.

h. Petitioner contends the following injustices warranting relief:

(1) At the time of his discharge, he was suffering from PTSD and mental health issues that affected his service; and

(2) After seeing a Marine fall to his death that this is when his conduct started to change and he had nightmares, and night terrors started.

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided medical records, a personal statement, and a VA disclosure form.

j. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated 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. He has provided medical evidence of diagnoses of PTSD and other mental health concerns that are temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given financial mismanagement is not a typical mental health symptoms. Additional records (e.g., post-service mental health records describing the Petitioner's

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

diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is post-service evidence from the VA of diagnoses of PTSD and other mental health conditions. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner’s request warrants relief in the interests of justice.

The Board found no error in Petitioner’s OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his Post-traumatic stress disorder (PTSD) and mental health condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner’s claimed PTSD and MHC and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post-service evidence from the VA of diagnoses of PTSD and other mental health conditions. In applying liberal consideration to Petitioner’s mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e).

In this regard, the Board considered, among other factors, the mitigating effect of Petitioner’s mental health condition may have had upon his misconduct. After thorough review and weighing the nature of Petitioner’s misconduct against the mitigating factors in his case, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN).

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 service 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 outweighed the positive aspects of his military record, even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate. In making this determination, the Board further noted that Petitioner’s overall trait average was below what was required to be considered for an Honorable character of service.

Further, the Board also concluded that Petitioner’s narrative reason for separation, separation code, separation authority, and reentry code remains appropriate in light of his record of misconduct. Ultimately, the Board determined any injustice in Petitioner’s record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 14 November 1990, his characterization of service was "General (Under Honorable Conditions)."

That no further correction action be taken on Petitioner's naval record.

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

4. It is certified that 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/18/2024

