



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

██████████  
Docket No. 10878-23

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 w/ enclosures  
(2) Advisory Opinion (AO) of 6 Jun 24  
(3) Rebuttal to AO of 2 Sep 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 punitive discharge be upgraded and that his narrative reason for separation be changed to reflect something less derogatory. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 13 September 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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.

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

b. Petitioner enlisted in the Marine Corps and began a period of active duty on 13 September 1999.

c. Petitioner was initially assigned for duty to 3d Battalion, 7th Marines in February of 2000 as an infantry rifleman.

d. Prior to completing his first year of service, Petitioner absented himself without authority, on 20 August 2000, and remained absent until 19 September 2000. After his initial return to military authority, he absented himself for an additional period from 21 September 2000 through 23 September 2000.

e. On 29 November 2000, Petitioner was tried and convicted by Special Court Martial (SPCM) for two specifications of violations under Article 86 of the Uniform Code of Military Justice, due to his periods of unauthorized absence (UA). He was sentenced to reduction to the paygrade of E-1, 2 months' confinement, and a Bad Conduct discharge.

f. During appellate review of the findings and sentence of his SPCM conviction, Petitioner claim through his appellate defense counsel, that he had been denied his right to effective assistance of counsel when he had discussed his desire to be discharged from the Marine Corps. Specifically, he claimed that his trial defense counsel had advised him it was not guaranteed he would be processed for administrative separation if his sentence did not include a punitive discharge. He claimed that his trial defense counsel recommended that he request a punitive discharge during sentencing in order to ensure that he would not be retained on active duty. After a thorough inquiry, which included a statement from Petitioner's trial defense counsel, Navy-Marine Court of Criminal Appeals reviewed Petitioner's assignments of error on 27 May 2002 and found no evidence of prejudicial error. Accordingly, the findings and sentence were affirmed.

g. Petitioner's punitive discharged was ordered executed and he was discharged with a BCD on 16 September 2002.

h. Petitioner contends that he experienced trauma during his military service which resulted in PTSD or another mental health condition. He attributes this trauma as being the impetus behind his UA periods. In describing his traumatic experience, he states that, while staying in a squad bay, some of the Marines old enough to drink went out drinking and attacked and threatened him after they came back intoxicated. He claims that he was dragged out of his rack, had a k-bar put against his throat, and was threatened he would be killed by Marines who told him "you think you are better than us." He purports to have reported this incident to his Company First Sergeant and Company Commander, and claims that they took no specific action regarding his allegations and, rather, encouraged him "to stay." Following the incident, he did not feel safe and feared for his life; he avoided being around the Marines in his unit as a result, which a friend / fellow Marine noticed. He provided a witness statement from this individual attesting to this observation of his change in demeanor and behavior. Petitioner "eventually left and went home for about three weeks" but noted that he "went back to base before the 30-day period." He again absented himself after returning because he claims that the harassment did not cease and he could not trust anyone in his platoon anymore. He indicates that he was told to sign

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

paperwork and then kicked out without being given a chance to go before a jury or judge to explain why he had reacted the way he did. With respect to his post-service character, he has worked full time since his discharge and is a peaceful, tranquil family man who has avoided trouble. In addition to his personal statement and supporting witness statement, Petitioner provided a character letter and recent psychological evaluation.

i. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration. The AO stated in pertinent part:

Petitioner submitted two character references and a psychological evaluation in support of his claim. The psychological evaluation dated November 2023 noted psychological testing that was conducted. One – the Personality Assessment Inventory (PAI) is considered a sound test in terms of both validity and reliability. The results indicated that the Petitioner endorsed many symptoms consistent of an Anxiety Disorder. The psychologist also administered the Sentence Completion Test and the House Tree Person Test. Both are projective in nature and are not considered particularly sound in terms of reliability and validity, and are often chosen measures to utilize with children and/or adolescents. The Petitioner was diagnosed with Unspecified Trauma-Stressor Related Disorder as a result of the psychological evaluation.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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

j. Petitioner submitted a rebuttal to the AO arguing the application of liberal consideration in mitigating his misconduct. After a review of the rebuttal evidence, the AO remained unchanged.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants partial relief. The Board reviewed the application under the guidance provided in references (b) through (e).

In this regard, the Board noted Petitioner’s misconduct and does not condone it; additionally, the Board concurred with the clinical conclusion, expressed in the AO, that there is insufficient evidence to attribute his misconduct to a mental health condition, notwithstanding his recent mental health diagnoses. Further, the Board noted that Petitioner provided sparse evidence of his purported post-service character or accomplishments. However, the Board considered other

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

factors applicable under a clemency analysis, to include but not limited to, severity of his misconduct, the nonviolent and victimless nature of his misconduct, and his clear youth and immaturity at a time. Additionally, the Board found it, more likely than not, based on substantiating statements, that he was subject to, at the very least, hazing or possibly maltreatment of the nature described committed by older, intoxicated Marines returning from an alcohol-infused liberty which did not include him due to his youth.

As a result, the Board concluded that the clemency factors in Petitioner's case outweighed the misconduct which resulted in his punitive discharge. Therefore, purely as a matter of clemency and equity, the Board determined that it is in the interest of justice to grant an upgrade to Petitioner's characterization of service 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.

Further, the Board noted that an upgrade of Petitioner's characterization of service to General (Under Honorable Conditions) amounts to significant clemency. Therefore, the determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action and no further relief is warranted. Ultimately, the Board determined Petitioner's assigned reason for separation remains appropriate based on his SPCM conviction.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 16 September 2002, he was discharged with a "General (Under Honorable Conditions)" characterization of service.

That 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 Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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

corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/4/2024

