



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

██████████
Docket No. 1376-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
██████████ USMC

- Ref:
- (a) 10 U.S.C. § 1552
 - (b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014
 - (c) PDUSD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)," 24 February 2016
 - (d) USD (P&R) Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," 25 August 2017
 - (e) USD (P&R) Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018
 - (f) MCO P1900.16F, Marine Corps Separation and Retirement Manual (Short Title: MARCORSEPMAN), 30 May 2001

- Encl:
- (1) DD Form 149 w/attachments
 - (2) DD Form 214
 - (3) Petitioner's Medical Record Entry of 19 April 2005
 - (4) Department of Veterans Affairs, Neck (Cervical Spine) Conditions Disability Benefits Questionnaire, 29 June 2022
 - (5) NAVMC (11), Administrative Remarks (1070), 7 October 2003
 - (6) NAVMC 10132, Unit Punishment Book (5810)
 - (7) DD Form 616, Report of Return of Absentee, 1 November 2004
 - (8) NAVMC 10132, Unit Punishment Book (5810), 23 May 2005
 - (9) Headquarters and Service Company, ██████████, ██████████ CO Memo 1900 B 27, subj: Notification of Separation Proceedings, 23 May 2005
 - (10) Petitioner's Memo 1900 B 27, subj: Acknowledgment of my Rights to be Exercised or Waived during Separation Proceedings, 23 May 2005
 - (11) Headquarters and Service Company ██████████, ██████████ CO Memo 1900 B 27, subj: Recommendation for Separation for Misconduct due to Commission of a Serious Offense in the case of [Petitioner], 24 May 2005

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

- (12) [REDACTED], [REDACTED] CO Memo 1900 B27, First Endorsement on Enclosure (11), subj: Recommendation for Separation in the case of [Petitioner], *date illegible*
- (13) [REDACTED] CO Memo 1910 B 0523, Second Endorsement on Enclosure (11), subj: Recommendation for Separation by Reason of Misconduct in the case of [Petitioner], 7 June 2005
- (14) Department of Veterans Affairs, Initial Post-Traumatic Stress Disorder (PTSD) – DSM V Disability Benefits Questionnaire, 13 April 2007
- (15) Department of Veterans Affairs Letter, 6 October 2017
- (16) VA Form 20-0995, Decision Review Request: Supplemental Claim, 27 January 2022
- (17) Department of Veterans Affairs Administrative Decision, 7 June 2022
- (18) BCNR Memo Docket No: NR20240001376, subj: Advisory Opinion ICO [Petitioner], 17 July 2024
- (19) Petitioner’s Counsel’s Letter, Re: DRS – AO Rebuttal; Docket Number NR20240001376, 22 July 2024

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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to “Honorable” and his narrative reason for separation be changed to “Secretarial Authority.”

2. The Board considered Petitioner’s allegations of error or injustice on 7 August 2024 and, pursuant to its governing policies and procedures, found insufficient evidence of any such error or injustice warranting relief. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner’s naval record; and applicable statutes, regulations, and policies, to include references (b) – (e).

3. Having reviewed all the evidence of record pertaining to Petitioner’s allegations of error or injustice, the Board found 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, it is in the interests of justice to waive the statute of limitation and consider Petitioner’s application on its merits.

c. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty service on 10 September 2001. See enclosure (2).

d. Petitioner was deployed to Iraq from December 2002 until May 2003.¹ See enclosure (3).

¹ During a Compensation and Pension (C&P) examination conducted pursuant to his later claim for disability compensation from the Department of Veterans Affairs (VA), Petitioner reported exposure to a rocket-propelled grenade (RPG) blast which blew off the doors of one [REDACTED] for which he was in charge of posting, resulting in a subsequent loss of consciousness and post-traumatic amnesia of the events prior to and after the blast. He also reported multiple other exposures to RPG fire which left him confused and disoriented. Although

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

e. On 8 September 2003, Petitioner commenced a period of unauthorized absence (UA) ending on 6 October 2003.²³ See enclosure (45).

f. On 7 October 2003, Petitioner was formally counseled in writing regarding the UA referenced in paragraph 3e above. He was warned that further misconduct may result in judicial or administrative action, to include administrative separation. See enclosure (5).

g. On 14 October 2003, Petitioner commenced a second period of UA until 23 October 2003. See enclosure (6).

h. On 8 December 2003, Petitioner commenced a third period of UA until 1 November 2004. See enclosure (7).

i. On 19 April 2005, Petitioner was evaluated at the Naval Health Clinic, [REDACTED], Mental Health Clinic. During this evaluation, he reported persistent symptoms in intrusive memories, decreased frustration tolerance, nightmares, and insomnia since his return from [REDACTED]. He also described occasional flashbacks triggered by smells, loud noises, and occasionally by dreams, and stated that his symptoms had returned and seemingly worsened since his return from UA in November. Based upon this evaluation, Petitioner was diagnosed with chronic PTSD by the evaluating staff psychologist. He was, however, found to be psychiatrically fit for full duty. See enclosure (3).

j. On 23 May 2005, Petitioner received non-judicial punishment (NJP) for UA in violation of Article 86, Uniform Code of Military Justice (UCMJ).⁴ His punishment consisted of reduction to Private First Class (E-2); forfeiture of \$692 pay per month for two months; and 60 days of restriction. See enclosure (8).

k. By memorandum dated 23 May 2005, Petitioner was formally notified that he was being recommended for administrative discharge from the Marine Corps for misconduct due to commission of a serious offense based upon the UA described in paragraph 3h above. This notice informed Petitioner that he could be discharged under other than honorable (OTH) conditions, and that that would be his command's recommendation. See enclosure (9).

l. By memorandum also dated 23 May 2005, Petitioner acknowledged receipt of the notice referenced in paragraph 3k above and waived all of his rights with regard to the administrative separation process after consulting with counsel. See enclosure (10).

m. By memorandum dated 24 May 2005, Petitioner's company commander recommended that Petitioner be administratively separated from the Marine Corps with an OTH

he could not recall the details of all of these incidents, he described one event when an RPG struck the side of his vehicle, causing it to nearly roll over and causing him to strike the interior steel chair with his head and back. See enclosure (4).

² Petitioner later reported to a mental health provider that he was UA on this occasion because he was denied an extension of leave when his grandmother died in August 2003 and he decided to stay for her funeral. See enclosure (3).

³ Petitioner asserts that he sought mental health treatment at his own expense from a civilian provider during this UA and was diagnosed with post-traumatic stress disorder (PTSD).

⁴ Petitioner was charged with the 329-day UA referenced in paragraph 3g above.

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

characterization of service for misconduct due to commission of a serious offense. See enclosure (11).

n. On 2 June 2005, the separation authority's Staff Judge Advocate determined the recommendation that Petitioner be discharged under OTH conditions for misconduct due to commission of a serious offense to be sufficient in law and fact. See enclosure (12).

o. By memorandum dated 7 June 2005, the separation authority directed that Petitioner be discharged from the Marine Corps under OTH conditions for misconduct due to commission of a serious offense. See enclosure (13).

p. On 17 June 2005, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to commission of a serious offense. See enclosure (2).

q. On 13 April 2007, Petitioner underwent a C&P examination pursuant to his claim for disability compensation from the VA. The examining psychologist diagnosed Petitioner with PTSD, and opined that his PTSD condition as "as likely as not incurred in or caused by participation in combat that occurred during active duty service." See enclosure (14).

r. By letter dated 6 October 2017, the VA denied Petitioner's claim for disability benefits, finding that his service was dishonorable for VA purposes. See enclosure (15).

s. On 27 January 2022, Petitioner submitted a supplemental claim to the VA responding to the previous denial of his claim referenced in paragraph 3r above. See enclosure (16).

t. On 7 June 2022, the VA determined that Petitioner's service in the Marine Corps was honorable for VA purposes and is therefore not a bar to VA benefits.⁵ See enclosure (17).

u. On 29 June 2022, Petitioner underwent a C&P examination pursuant to his claim for disability benefits from the VA, which found that Petitioner suffered traumatic brain injuries (TBI) during his Marine Corps service. See enclosure (14).

v. Petitioner contends that his OTH discharge is unjust because he developed PTSD as a result of his combat service and it does not accurately characterize his overall service. He also described his post-service conduct reflecting his rehabilitation, and notes that the VA determined his service to be honorable for VA purposes. See enclosure (1).

w. Because he based his claim for relief in whole or in part upon his combat-related PTSD condition, Petitioner's application and record were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board's consideration. This AO noted that Petitioner was diagnosed with PTSD during his military service, and opined that "[i]t is possible to consider his repeated UA following combat deployment as avoidance related to PTSD symptoms." However, the licensed clinical psychologist further opined that "[i]t is difficult to attribute an extended UA of almost a year solely to PTSD or TBI symptoms." Ultimately, it was

⁵ It is not apparent from the evidence provided by Petitioner on what basis the VA made this determination.

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

her clinical opinion that there was evidence of PTSD and TBI attributed to Petitioner's service, but insufficient evidence to attribute all of his misconduct to PTSD or TBI. See enclosure (18).

x. By letter dated 22 July 2024, Petitioner's counsel provided a response to the AO referenced in paragraph 3w above for the Board's consideration. In this response, Petitioner's counsel argued that "it is not of consequence whether [Petitioner's] actions were *entirely* attributable to PTSD." Rather, Petitioner's counsel asserted that it was sufficient to find that Petitioner's misconduct was mitigated by his PTSD and urged the Board to apply liberal consideration in this regard. See enclosure (19).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

The Board found no error in Petitioner's discharge under OTH conditions for misconduct due to commission of a serious offense. The evidence reflects that Petitioner was UA for 329 days in violation of Article 86, UCMJ, and this serious offense was aggravated by the fact that Petitioner had two previous UAs and had been warned of the potential consequences of further misconduct. In accordance with paragraph 6210.6 of reference (f), a Marine may be processed for separation for misconduct due to commission of a serious military offense when the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same offense under the UCMJ. Petitioner's 329-day UA certainly satisfied this criteria. It appears that all procedural requirements were satisfied to sustain Petitioner's discharge, as he was properly notified that he was being processed for separation and that he could be discharged under OTH conditions, and he voluntarily waived all of his rights in the administrative separation process after consulting with counsel. Finally, an OTH characterization of service was both authorized and appropriate for such conduct under the circumstances.

Because Petitioner based his claim for relief upon his combat-related PTSD condition, the Board reviewed his application in accordance with the guidance of references (a) – (d). Accordingly, the Board reviewed Petitioner's application with liberal consideration that his combat-related PTSD condition potentially contributed to the circumstances of his discharge in accordance with reference (a), and applied liberal consideration to the in-service existence of his PTSD condition and its effect upon the conduct for which he was discharged in accordance with references (b) – (d). In this regard, the Board found sufficient evidence to conclude that Petitioner developed PTSD as a result of his experiences in combat in [REDACTED]. Although the Board applied liberal consideration to reach this conclusion in accordance with references (b) – (d), it need not have done so to reach this conclusion since Petitioner's PTSD condition was diagnosed by a military mental health provider and recorded in his in-service medical records. Having found sufficient evidence that Petitioner developed PTSD as a result of his combat experience, the Board also found sufficient evidence to conclude that this condition potentially contributed to the circumstances of his discharge. Specifically, by applying liberal consideration the Board found it reasonable to conclude that Petitioner's combat-related PTSD condition potentially contributed to the misconduct for which he was discharged as his UAs may have been an avoidance mechanism to escape the PTSD symptoms that he was experiencing after his return from Iraq. Accordingly, the Board found that Petitioner's PTSD condition mitigated the misconduct for

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

which he was discharged. Although the Board found that Petitioner's PTSD condition mitigated the misconduct for which he was discharged, it also found that the severity of Petitioner's 329-day UA far outweighed any mitigating effect provided by that condition. As mentioned above, this UA followed two previous UA, which aggravates the severity of this already serious misconduct. While PTSD may mitigate short periods of UA for the member as an avoidance mechanism, it does not justify or explain a UA of almost a year.

In addition to applying liberal consideration to Petitioner's PTSD condition and its effect upon his conduct in accordance with references (a) – (d), the Board also considered the totality of the circumstances to determine whether equitable 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 PTSD condition upon the misconduct for which Petitioner was discharged, as discussed above; the totality of Petitioner's service, to include his service in combat; that Petitioner developed PTSD and has presumably continued to suffer its effects since his discharge; that the VA has determined Petitioner's service to be honorable for VA purposes; the post-service evidence of Petitioner rehabilitation, including his proactive efforts to overcome his alcohol addiction and his contributions to his community; the favorable character reference included with Petitioner's application; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Unfortunately, the Board found these mitigating circumstances insufficient to justify any equitable relief. Specifically, the Board found the severity of a 329-day UA, which was preceded by two UAs, and the fact that these three separate UAs combined to occupy over a year of his 33 months in the Marine Corps, to far outweigh all of the potentially mitigating circumstances combined. Accordingly, the Board determined that equitable relief is not warranted in the interests of justice.

RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on 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 titled matter.
5. In accordance with Section 6(e)(2)(c) of SECNAVINST 5420.193, I have determined that the Board's decision in this case warrants Secretarial review. Specifically, it is my opinion that the Board undervalued the mitigating circumstances and that at least some equitable relief may be warranted in the interests of justice. Accordingly, the foregoing action of the Board is submitted for your review and action.

11/8/2024

[REDACTED]

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

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

— Board Recommendation Approved (Deny Relief – I concur with the Board’s conclusions and therefore direct that no corrective action be taken on Petitioner’s naval record.)

X Petitioner’s Request Partially Approved (Partial Relief – I do not concur with the Board’s conclusion. Specifically, while I agree with the Board’s conclusion that there was no error in Petitioner’s discharge under OTH conditions for misconduct due to commission of a serious offense, I disagree with the conclusion that the mitigating circumstances are insufficient to justify any equitable relief. While I do not believe that those mitigating circumstances so significantly outweighed the severity of the misconduct for which Petitioner was discharged to justify the extraordinary relief requested by Petitioner, I do believe it was sufficient to justify at least some equitable relief in the interests of justice. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 17 June 2005 was characterized as “General (under honorable conditions).” All other entries currently reflected in Petitioner’s current DD Form 214 are to remain unchanged. A copy of this report of proceedings is also to be added to Petitioner’s naval record.)

— Petitioner’s Request Approved (Full Relief – I do not concur with the Board’s conclusion. Specifically, while I agree with the Board’s conclusion that there was no error in Petitioner’s discharge under OTH conditions for misconduct due to commission of a serious offense, I disagree with the conclusion that the mitigating circumstances were insufficient to justify equitable relief. I believe that those mitigating circumstances did so significantly outweigh the severity of the misconduct for which Petitioner was discharged to justify the equitable relief that he requests. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 17 June 2005 was characterized as “Honorable”; that his narrative reason for separation was “Secretarial Authority”; that his separation authority was “MARCORSEPMAN par. 6214”; that his separation code was “JFF1”; and that his reentry code was “RE-1.” All other entries currently reflected in Petitioner’s current DD Form 214 are to remain unchanged. Petitioner shall also be issued an Honorable Discharge Certificate. A copy of this report of proceedings shall be added to Petitioner’s naval record.)

[REDACTED]
[REDACTED] 11/26/24