



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

[REDACTED]
Docket No. 1398-24
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) USD Memo, 25 Aug 17 (Kurta Memo)
(c) PDUSD Memo, 4 Apr 24 (Vazirani Memo)
(d) Petitioner's Official Military Personnel File (OMPF)

Encl: (1) DD Form 149
(2) Advisory Opinion of 19 Jul 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 naval record be corrected the narrative reasons for both his separation from the U.S. Marine Corps in 1998 and his separation from the U.S. Navy in 2002. He specifically requests his record "to reflect the true nature of [his] discharge" as a medical discharge due to depression, and to upgrade his characterization of service and narrative reason for discharge.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 August 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of the naval records, and applicable statutes, regulations, and policies to include references (b) and (c). In addition, the Board considered enclosure (2), an advisory opinion (AO) from a qualified mental health professional 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.

b. In August 1998, the Military Entrance Processing Station referred Petitioner for a psychological evaluation due to Petitioner relaying to medical personnel that he had a history of suicidal ideation because of family stresses. Upon examination, the psychologist stated

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Petitioner had a transient and not severe adjustment disorder which was handled satisfactorily in his home without outside psychiatric or psychological intervention, reference (d). Subsequently, Petitioner began active duty training in the U.S. Marine Corps on 10 September 1998. On 22 October 1998, Petitioner was recommended for entry level separation for failure to adapt (depression). On 29 October 1998, Petitioner was discharged from the U.S. Marine Corps with an uncharacterized entry level separation. His Certificate of Release or Discharge from Active Duty (DD Form 214) states as the narrative reason for separation as "Defective Enlistment and Induction – Fraudulent Enlistment."

c. On 12 June 2000, Petitioner enlisted and began a period of active duty in the U.S. Navy. On 25 July 2001, Petitioner sought treatment from the Navy Drug and Alcohol Counselor on board the [REDACTED]. He was recommended for Level III Residential treatment; however, there was not space in the program for him to begin treatment. On 28 August 2001, Petitioner went UA (unauthorized absence). He traveled home to [REDACTED] where he surrendered to authorities at [REDACTED] on 5 September 2001. He subsequently began treatment, on 6 September 2001, at [REDACTED] in [REDACTED]. Medical personnel diagnosed him with Depressive Disorder and alcohol dependence. Petitioner noted he used marijuana while he was UA. Eventually, he was then transferred to Alcohol Rehabilitation Department [REDACTED] and, due to alleged inappropriate behavior in the treatment program, he was later discharged from the treatment program and determined to be a rehabilitation failure. Subsequently, Petitioner's command began his administrative separation processing for misconduct due to drug abuse.

d. On 4 March 2002, Petitioner entered an agreement with his Commanding Officer (CO) to undergo weekly urinalysis tests for one year and to participate in substance abuse support group meetings. In return, the CO agreed to request Petitioner be retained in the Navy. On 30 June 2002, Petitioner's new CO noted in the Administrative Separation Recommendation, "[a]lthough [Petitioner] has admitted to drug abuse his potential for further service is such that I recommend retention. He is extremely motivated both in his job and in his outpatient efforts," The CO recommended a waiver for his mandatory separation; however, Navy Personnel Command did not approve the waiver request.

e. Ultimately, on 19 July 2002, Petitioner was discharged from service with an Other Than Honorable characterization of Service due to his drug abuse. Petitioner twice requested the Navy Discharge Review Board (NDRB) change his characterization of service. After initially being denied relief, in 2017, the NDRB found Petitioner's discharge in 2002 was improper as the command did not follow the Navy Military Personnel Manual (MILPERSMAN) 1910-146 when processing Petitioner for separation. The NDRB determined he warranted a General (Under Honorable Conditions) characterization of service but did not change the narrative reason for separation or the reentry code.

f. Petitioner now requests a medical discharge and claims that he should have been medically discharged for depression. The Petitioner also contends the allegations made against him while at the treatment facility in [REDACTED] were false and unjustly resulted in his removal from rehabilitation. Finally, Petitioner alleges he was improperly processed for administrative separation for drug abuse, as the command improperly used his drug use admissions, made while

he was in treatment, to process him for misconduct. Petitioner submitted Department of Veterans Affairs (VA) documents, to include a compensation and pension rating dated September 2022, indicating 50% service-connection for depression.

g. The Board sought an advisory opinion (AO) from a licensed clinical psychologist regarding Petitioner's allegations. The psychologist reviewed Petitioner's records and determined there was insufficient evidence that Petitioner's misconduct could be attributed to military service or that his misconduct could be attributed to a mental health condition, enclosure (2). After reviewing Petitioner's rebuttal evidence, the AO remained unchanged.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting partial relief. Specifically, the Board determined Petitioner's the narrative reason for separation on his Marine Corps DD Form 214 improperly states: "Defective Enlistment and Induction Fraudulent Enlistment." However, the Board found evidence that Petitioner disclosed his prior mental health symptoms to medical providers prior to enlistment, the Marine Corps was aware of his medical history, and determined his mental health not a bar to induction. Therefore, the Board determined Petitioner warrants a new DD-214, for the period of ending 29 October 1998, stating "Erroneous Entry" as the narrative reason for separation.

Despite the Board's recommendation to grant the aforementioned partial relief as a matter of error, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner.

Because Petitioner based his application for relief in whole or in part on matters relating to mental health conditions, the Board applied liberal consideration in accordance with the Kurta Memo. In this regard, the Board gave special consideration to the VA's determination that these conditions were service-connected, and also gave appropriate weight to the diagnoses that Petitioner received both during and after his periods of service. The Board substantially concurred with the AO, which concluded that there was "insufficient evidence of a mental health condition that may be attributed to military service" and that there is "insufficient evidence that his misconduct could be attributed to a mental health condition."

In accordance with the [REDACTED] Memo, the Board first applied liberal consideration to Petitioner's assertion that his mental health condition potentially contributed to the circumstances resulting in his discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed his claim of medical unfitness for continued service, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration. Thus, the Board analyzed whether Petitioner's mental health condition actually excused or mitigated his discharge. On this point, the Board determined that mitigation was not appropriate in his case. In making this finding, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition.

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The Board further observed that Petitioner was processed for administrative separation based on misconduct. In such case, even assuming he had been placed into the Disability Evaluation System (DES), processing due to misconduct takes precedence over DES processing. With respect to its analysis of Petitioner's request for a service disability separation, the Board observed there is insufficient evidence that he had an unfitting condition while he was on active duty. On this point, the Board found insufficient evidence in his service records, and he did not provide any, demonstrating that while he was in service he had an unfitting condition within the meaning of the DES. The Board noted that there is no indication that anyone in his chain of command observed that he was unfit to perform his duties due to any medical conditions. Rather, it is clear that Petitioner was discharged due to his use of illegal drugs. To be eligible for a service disability separation, a service member must have conditions that have been medically determined to be unfitting at the time of service. In his case, the proximate reason for his discharge was his misconduct. Accordingly, given the totality of the circumstances, the Board determined Petitioner request for a discharge upgrade and change to his narrative reason for separation, for the period ending 19 July 2002, does not merit relief.

RECOMMENDATION

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 29 October 1998, indicating his narrative reason for separation, separation code, and separation authority reflect an "Defective Enlistment and Induction - Erroneous Entry" discharge.

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

That no further changes be made to 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

9/26/2024

[REDACTED]