



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

■  
Docket No. 1521-24

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) 10 U.S.C. §1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)  
(c) USECDEF Memo of 25 Aug 17 (Kurta Memo)  
(d) SECDEF Memo of 13 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)  
(4) Advisory Opinion of 26 Jun 24

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) requesting his characterization of service be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosures (1) through (3) apply.

2. The Board, consisting of ■■■■■, ■■■■■, and ■■■■■, reviewed Petitioner's allegations of error and injustice on 5 August 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 (d). Additionally, the Board considered enclosure (4), an advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner 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 17 September 1985. After serving an initial period of Honorable service, during which he received two NJPs and committed a driving while intoxicated offense, Petitioner immediately reenlisted and commenced a second period of active duty on 5 June 1989.

d. On 28 November 1989, Petitioner was issued an administrative remarks (Page 11) counseling concerning deficiencies in his performance and/or conduct, specifically, frequent involvement with military authorities, unauthorized absence (UA), and conduct unbecoming a Marine. He was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 12 December 1989, Petitioner received non-judicial punishment (NJP) for failure to go to appointed place of duty at the time prescribed and violating a lawful order. On 4 January 1990, Petitioner received NJP for two specifications of failure to obey a lawful order. On 25 April 1990 and 31 July 1990, Petitioner received Page 11 counselings for theft of services by tampering with the Barracks cable system and possession of alcohol in the Barracks, respectively. In both cases, he was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 19 December 1990 Petitioner was convicted by civil authorities of speeding, attempting to elude an officer, and driving with a suspended license. Petitioner received Page 11 counseling for the civil offenses and was again advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 26 Mar 1991, Petitioner was counseled concerning involvement in an assault at the Non-commissioned Officer's Club and informed of the Commander's intention to initiate administrative separation processing. However, Petitioner was retained and later advanced to Corporal (E-4), on 1 November 1991, and Sergeant (E-5), on 2 August 1992.

e. On 5 February 1993, Petitioner extended his enlistment to accept orders to become a Drill Instructor (DI). Petitioner completed the DI course on 17 June 1993. On 1 February 1994, Petitioner received NJP for violation of a lawful order by having a loaded 9mm pistol in his vehicle while on base. He also received an adverse fitness report indicating he had been suspended from all DI duties. His reporting senior noted that he had been counseled on numerous occasions for making physical contact with recruits, communicating threats, and using profane language. Petitioner provided a rebuttal statement, stating he was progressing well and that unintentional errors did not constitute repeated poor judgement.

f. On 14 March 1994, Petitioner was notified of administrative separation processing by reason of misconduct due to a pattern of misconduct and civilian conviction. He consulted with counsel and waived his right to an administrative discharge board. Petitioner's commanding officer recommended an under Other Than Honorable (OTH) discharge by reason of his misconduct. The separation authority directed an OTH characterization of service, and on 12 May 1994, he was so discharged. Upon his discharge, he was issued a DD Form 214 that did not document his continuous Honorable service from 17 September 1985 through 4 June 1989.

g. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade, on 17 August 2000, based on their determination that his discharge was proper as issued.

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h. Petitioner previously applied to this Board for an upgrade to his characterization of service where he contended that his discharge was unjust because his misconduct was due to grief over his father's death. The Board denied his request on 17 February 2016.

i. Petitioner contends he suffers from Post Traumatic Stress Disorder (PTSD) and mental health concerns, that he was in a state of depression due to his father's death in 1986, and that he is not the young distraught man he was thirty years ago. For purposes of clemency and equity consideration, Petitioner provided twelve advocacy letters as evidence of experiences, character, and post-service conduct.

j. As part of the Board's review, the Board considered enclosure (4). Although the Petitioner was afforded an opportunity to submit an AO rebuttal, he chose not to do so. The AO states in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to circumstances of his separation .... His complete service medical record was not available for review.

Petitioner contended he incurred depression due to the death of his father in November 1986, which contributed to his misconduct and acceptance of separation from service.

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 no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service, or provide a nexus with his misconduct, particularly given the timeline of his misconduct, which includes extended periods without incident.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. 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 partial relief. Specifically, as noted above, Petitioner's DD Form 214 does not reflect Petitioner's period of continuous Honorable service from 17 September 1985 to 4 June 1989.

As a result, the Board concluded that Petitioner's record shall be reviewed, and that corrections shall be made to Block 18, as appropriate, based on Petitioner's period of Honorable service.

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Notwithstanding the recommended corrective action below, the Board found no error in Petitioner's OTH characterization of service discharge for misconduct due to a pattern of misconduct. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and the previously mentioned contentions raised in his application.

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant granting the relief requested. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely negative effect Petitioner's repeated misconduct had on his unit and the discrediting effect petitioner's conduct had on the Marine Corps. The Board also noted that Petitioner was placed into a position of trust and confidence as a Drill Instructor, and he failed to meet his obligation to ensure the safety of those in his charge. The Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute his misconduct to PTSD or another mental health condition. As explained in the AO, 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.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence Petitioner provided in mitigation and commends him for his post-discharge rehabilitation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the characterization of service upgrade he requested or granting an upgrade as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

#### RECOMMENDATION

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) adding: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 850917 TO 890604" to Block 18, "Remarks."

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.

8/22/2024

