



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

██████████
Docket No. 2074-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMCR

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 18 Jun 24

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, through counsel, filed enclosure (1) requesting upgrade of his discharge, change of his narrative reason for separation to Secretarial Authority, and change of his separation code to "JFF." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 22 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) furnished by qualified mental health provider, which 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 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 Reserve on 14 January 1987.
- d. On 1 June 1988, he received counseling for excessive absences from scheduled drills.
- e. On 21 June 1988 he was ordered to involuntary active duty.
- f. On 2 January 1989, Petitioner received non-judicial punishment (NJP) for disobeying a lawful order, drunk and disorderly conduct, and incapacitation for proper performance of his duties.
- g. On 5 January 1989, Petitioner participated in contingency operations in the Republic of [REDACTED].
- h. On 16 February 1989, Petitioner commenced a period of unauthorized absence (UA) ended by surrender on 21 March 1989.
- i. On 23 March 1989, an entry was made in Petitioner's official medical record indicating he had been seen for depression with suicidal ideation.
- j. On 8 June 1989, Petitioner was convicted at Special Court-Martial (SPCM) of two specifications of UA under Article 86, four specifications of disrespect under Article 91, one specification of sleeping on post under Article 113, and one specification of assault, under Article 128 of the Uniform Code of Military Justice (UCMJ). Petitioner's sentence included confinement with hard labor for 100 days, reduction to paygrade E1, forfeiture of \$350 pay per month for four months, and a Bad Conduct Discharge (BCD).
- k. The documents pertinent to review of Petitioner's SPCM conviction and sentence are not in his official record. 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. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), he was separated on 3 April 1990 with a "Bad Conduct Discharge."
- l. Petitioner contends his severe mental illnesses, which manifested but were not diagnosed during service, mitigated his misconduct because his symptoms were directly tied to behavior that was not compatible with continued military service. Inability to regulate his mood and distress at being reminded of the traumatic experiences, provides the context for his infractions such as disrespect, assault, alcohol abuse, and absences. He further contends, without condoning his misconduct the Board should apply liberal consideration and weigh the evidence in his favor, such as his honorable service before the onset of mental illness. He contends he has been punished enough, and the Board is empowered to remove barriers to benefits and healthcare to which, as a disabled veteran, he would otherwise be entitled. For purposes of clemency and equity consideration, the Board considered the evidence Petitioner provided in support of his application.

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m. As part of the Board's review, the Board considered enclosure (4). The AO states in pertinent part:

Although the Petitioner was evaluated during military service, there is no evidence regarding any diagnosis that may have been assigned. Post-service, he has received substantial treatment from the Vet Center and civilian providers of PTSD and other mental health conditions, which they have considered to have onset or been exacerbated by military service. It is plausible that the Petitioner's mental health symptoms may have deteriorated significantly during his Panama deployment, as his misconduct which resulted in legal consequences all occurred in the space of six months following the deployment. It is possible that his pre-deployment absences from drills could be considered avoidance from childhood trauma exposure or behavior consistent with problematic characterological traits.

The AO concluded, "it is my clinical opinion there is post-service evidence from Vet Center and civilian mental health providers of PTSD and another mental health condition that may be attributed to military service. There is post-service evidence from those providers 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.

Upon review and consideration of all the evidence of record, and especially in light of enclosure (4), the Board concludes that Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) through (d).

In this regard, the Board noted Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on the conclusion reached in the AO. The Board concurred with the AO that a mental health condition existed at the time of his service and his misconduct could be attributed to PTSD or another mental health condition. After carefully considering all the evidence, the Board felt that Petitioner's mental health condition should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. The Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been on of Bad Conduct, and re-characterization to General (Under Honorable Conditions) (GEN) is now more appropriate. Additionally, based on the same rationale, the Board determined Petitioner's reason for separation, separation authority, and separation code should be changed to reflect a Secretarial Authority discharge.

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

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conditions, and that a GEN discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's assigned reentry code remains appropriate based on his unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION

That Petitioner be issued a new DD Form 214, for the period ending 3 April 1990, indicating his character of service as "General (Under Honorable Conditions)," with a separation authority of "MARCORSEPMAN 6214," separation code of "JFF1," and narrative reason for separation of "Secretarial Authority."

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.
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.

8/12/2024

[REDACTED]