



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

█
Docket No. 2920-24
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER █
█ 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 with attachments
(2) Case summary
(3) Subject's naval record
(4) Advisory Opinion dated 1 August 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting an upgrade to his characterization of service to Honorable. Enclosures (1) through (4) apply.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 9 October 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 (e). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) prepared by a qualified mental health professional. Even though Petitioner was provided an opportunity to respond to the AO, he 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 and commenced a period of active duty with the Marine Corps on 6 April 1994. On 30 December 1997, Petitioner received non-judicial punishment (NJP) for wrongful use of marijuana.

d. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). 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. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Marine Corps on 11 March 1988 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct Drug Abuse," his separation code is "HKK1," and his reenlistment code is "RE-4B."

e. Petitioner contends that he incurred PTSD or a mental health condition during military service, his misconduct was a one-time incident, he was subjected to racism and discrimination, and he would like to receive Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered the evidence Petitioner provided in support of his application.

f. Based on Petitioner's assertion of a PTSD/mental health condition, enclosure (4) was requested and reviewed. It stated in pertinent part:

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, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request merits relief. Specifically, in light of reference (b) though (e), after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions). The Board noted Petitioner's disciplinary infractions and does not condone his misconduct; however, the Board considered Petitioner's post-discharge accomplishments and his contributions to society. As a result, the Board determined it was in the

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interests of justice to grant his request for an upgrade based on the mitigation evidence he provided.

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, based on his record of misconduct, the Board found no error or injustice with Petitioner's narrative reason for separation, separation authority, separation code, or reentry code. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

In view of the foregoing, the Board finds in favor of clemency warranting the following corrective action:

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 11 March 1998, indicating he was issued a "General (Under Honorable Conditions)" characterization of service.

That no further changes be made to the 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.

11/4/2024

