



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

██████████
Docket No. 3587-24

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 ██████████ 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 w/ enclosures
(2) Advisory Opinion (AO) of 7 August 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 discharge be upgraded to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 20 September 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered the 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, 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Marine Corps and began a period of active duty on 14 October 1969. He served approximately two years without incident until absenting himself without authority for a period of 40 days from 6 October 1971 through 15 November 1971.

c. Following his return, Petitioner was granted a drug abuse exemption on 1 December 1971. However, he absented himself again from 17-18 January 1972 and then for a period of 95 days from 5 April 1972 until 9 July 1972.

d. Petitioner was tried and convicted by Special Court-Martial (SPCM) for two specifications of violations under Article 86 of the Uniform Code of Military Justice (UCMJ) for his periods of unauthorized absence (UA). His sentence included reduction to the paygrade of E-1, two months confinement at hard labor, and five months forfeiture of \$100 pay per month.

e. Following his confinement, he again absented himself on 2 October 1972 until his return on 27 November 1972.

f. On 26 December 1972, Petitioner requested separation in lieu of trial for the good of the service, acknowledging that his discharge would most likely be undesirable. Endorsement of his request noted that he had no desire to remain in the Marine Corps. Petitioner was so discharged on 29 January 1973.

g. Petitioner contends that he was excited to join the Marine Corps and serve with his brothers who were serving in [REDACTED] in both the Marine Corps and the Army. He learned during boot camp that his older brother had been killed in action in the war and was granted emergency leave to attend a closed casket funeral; however, he states that he entered a progressive tailspin of grief and depression without understanding what he was going through due to his youth and immaturity. In the time after his discharge, he matured, sought help, and ultimately fulfilled his service obligation to his country through both active duty service in the Army and through federal service.

h. For purposes of clemency and equity consideration, Petitioner submitted numerous clemency documents, to include: a diploma from Drill Sergeant's School with an accompanying letter awarding him a corresponding identification badge, enlisted evaluation reports from his Army service, record of his completion of academic education with award of the occupational specialty as an infantry pathfinder, qualification to serve as part of a Drop Zone Support Team, award of the Army Excellence in Competition Badge of bronze for rifle, completion of the Army Operations and Intelligence Course, completion of the Advanced Noncommissioned Officer Course, award of the Senior Parachutist Badge, award of the Master Parachutist Badge, completion of the Jumpmaster Course, award of the German Armed Forces Airborne Badge, certificate of his Honorable retirement from the regular Army, on 1 December 1996, in the rank of master sergeant, a letter from Central Region Chief of Operations, Federal Investigative Services Division, complimenting his outstanding performance of duty in federal civil service in investigating the background of applicants to serve as Department of Defense linguists, a letter from the Associate Director, Federal Investigative Services, congratulating Petitioner on his retirement from federal service on 30 January 2015, graduation with honors from a business

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college, and, an Associate's Degree in applied science, a diploma for graduation with a Bachelor of Science, Magna Cum Laude.

i. Because Petitioner contends a mental health condition impacted the circumstances of his discharge, the Board also requested enclosure (2), the AO, for consideration, which provided the following review of his available evidence:

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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 the chronic and repetitive nature of his misconduct and his later successful completion of service in another branch of the military. 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, "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 review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed the application under the guidance provided in references (b) through (e).

In this regard, the Board noted Petitioner's misconduct and does not condone it; additionally, the Board concurred with the clinical conclusion that Petitioner provided insufficient evidence of a mental health condition which might have contributed to his repeated UA misconduct or drug abuse.

However, the Board favorably considered his extensive documentation of his post-discharge character and accomplishments as substantial evidence of his rehabilitation and contribution toward over 30 years of additional public service following his discharge from the Marine Corps, specifically observing that Petitioner's performance of duties was notably above average to have promoted to the rank of Master Sergeant in the Army prior to his retirement. Additionally, his post-discharge character would have to have met the stringent security clearance requirements to have served at length as a field operator with the Federal Investigative Services, from which he also retired. As a result, and after additionally considering factors to include Petitioner's youth, immaturity, and probable poorly adjusted response to his brother's untimely death during his service in Vietnam, the Board found that the totality of favorable matters in support of clemency

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outweighed the misconduct which resulted in Petitioner's request for an undesirable discharge in lieu of trial by court-martial. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) purely as a matter of clemency.

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. Additionally, the Board determined Petitioner's narrative reason for separation and reentry code remain appropriate in light of his record of misconduct. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 29 January 1973, his characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to Petitioner's record.

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.

10/28/2024

