



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

██████████
Docket No. 3743-24

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 23 Aug 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 and that his narrative reason for separation, separation code, reentry code, and separation authority be changed to reflect "Secretarial Authority." 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 also considered the advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner's mental health contentions.

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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[REDACTED] XXX XX [REDACTED] USMC

b. Petitioner enlisted in the Marine Corps and, after receiving a drug waiver for pre-service marijuana use, began a period of active duty on 14 July 2004.

c. On 26 August 2005, Petitioner received nonjudicial punishment (NJP) for a violation under Article 86 of the Uniform Code of Military Justice (UCMJ) due to a period of unauthorized absence (UA) from 22 to 24 August of 2005. He was subject to 14 days of restriction and extra duty with a suspended forfeiture of pay.

d. A Naval Drug Lab message, on 1 September 2005, reported Petitioner's urinalysis test positive for THC, and he was subject to a second NJP for his violation of Article 112a of the UCMJ due to wrongful use of marijuana. His punishment resulted in his reduction to the paygrade of E-2, but his forfeitures of pay were again suspended.

e. From 22 September 2005 through 17 July 2006, Petitioner served a combat deployment in Iraq for which he was awarded the Combat Action Ribbon (CAR).

f. On 15 July 2006, Petitioner was issued administrative counseling for violation of a battalion order by having hard liquor in the Bachelor Enlisted Quarters and for underage drinking.

g. Petitioner served approximately eight months without issue following his return from deployment until receiving administrative counseling, on 6 April 2007, for a second positive urinalysis, which resulted in him not being recommended for promotion while pending disciplinary and/or administrative action. The controlled substance Petitioner used was not specified in the counseling entry.

h. Petitioner was tried by Summary Court-Martial on 18 May 2007 and found guilty of a violation of Article 112a. His punishment include 30 days' confinement, reduction to the paygrade of E-1, and forfeiture of \$867 pay.

i. Although the administrative separation processing records were not retained in Petitioner's official military personnel file, his discharge record reflects that he was processed for separation by reason of misconduct due to drug abuse, waived his right to a hearing before an administrative separation board, and was discharged under Other Than Honorable conditions on 5 October 2007.

j. Petitioner contends he suffered from combat-related post-traumatic stress disorder (PTSD) following his deployment in [REDACTED] and that his symptoms affected his behavior and judgment, contributing to the allegations which resulted in his discharge. He refers to his use of cocaine after his combat deployment as the only blemish on his military record and states that he cannot receive meaningful, long-term treatment from the Department of Veterans Affairs (VA) due to his characterization of service. Since his discharge, he claims to have maintained meaningful employment with clean criminal record and to be of value to his community and dedicated to his family. In support of his request, he submitted mental health records documenting his PTSD

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[REDACTED] XXX XX [REDACTED] USMC

diagnosis with a letter from his psychologist, service records, a summary of his post-service clemency, his résumé, and a photo.

k. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration, which stated in pertinent part:

Petitioner submitted a psychological evaluation dated December 2008 that noted Petitioner's diagnosis of PTSD related to a kinetic combat tour in 2004. The Petitioner also submitted his resume in support of his claim. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Based on his statement and the psychological evaluation submitted, it is possible that the Petitioner's UA and substance use/abuse could have been the result of PTSD symptoms.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants 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 also observed, contrary to Petitioner's contention that his cocaine use was the only blemish during his service, that he had an incident of UA and marijuana use which resulted in two NJPs. In addition, he received an administrative counseling for violating orders regulating the consumption of alcohol in enlisted barracks. Additionally, notwithstanding the AO's reliance on a combat tour date of 2004, the Board found that Petitioner's combat tour did not occur until September of 2005, whereas his UA and marijuana use occurred during the month prior to his deployment. Regardless, the Board concurred with the AO to the extent that it was possible that Petitioner's post-deployment use of cocaine, as well as his underage consumption of alcohol, could have been the result of his PTSD symptoms following exposure to combat trauma. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) and change his basis for separation 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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate. 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, for the period ending 5 October 2007, he was discharged with a "General (Under Honorable Conditions)" characterization, under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1," and a reentry code of "RE-IJ."

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

