



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

█  
Docket No. 4331-24  
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) 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) Advisory Opinion 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 a discharge characterization upgrade from "Other Than Honorable Conditions."

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 23 September 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional, that 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.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 9 December 1965. Between 29 August 1966 and 20 December 1968, Petitioner deployed to █. On

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23 October 1968, Petitioner received nonjudicial punishment (NJP) for disobeying a lawful order from his superior officer by failing to turn his personal weapon and failing to obey a general order by possessing of a privately owned weapon. On 10 December 1968, Petitioner was honorably discharged from the Marine Corps by reason of immediate reenlistment. On 11 December 1968, Petitioner began a second period of active duty. On 19 May 1969, Petitioner received a second NJP for a period of unauthorized absence (UA) from his appointed place of duty. Between 20 May 1969 and 22 December 1969, Petitioner had three periods of UA totaling 170 days and resulting in his apprehension by military authorities.

d. On 29 September 1969, Petitioner was convicted by special court martial (SPCM) for wrongfully and willfully discharging a firearm under circumstances likely to endanger human life, assisting another person by taking a weapon used on the alleged offense and hiding them at his quarters, three period of UA, and breaking restriction. Petitioner was found guilty and sentenced to a Bad Conduct Discharge (BCD), confinement at hard labor, and forfeiture of pay. On 9 October 1969, the Petitioner's SPCM sentence as approved on review was affirmed. Between 12 January 1970 and 8 September 1970, Petitioner had an additional four periods of UA totaling 223 days. On 9 October 1970, the U.S. Navy Court of Military Review affirmed Petitioner's conviction and sentence. After Petitioner waived his right to request restoration and requested immediate execution of his BCD, he was so discharged on 6 November 1970.

e. Petitioner contends he was the subject of an unwarranted racially motivated verbal attack by his coworkers and threatened while performing his job as assistant club manager. Petitioner claims the incident exacerbated the anxiety he acquired during multiple tours in [REDACTED], where several friends and fellow Marines were killed. Growing up in the South under segregation, Petitioner felt a sense of inferiority to whites and was apprehensive when interacting with his coworkers. During that period, Petitioner states there were little to no African American Marines in positions of authority to inspire a culture of equality, fairness, trust, and provide top cover. This left the Petitioner feeling completely hopeless with no faith in his military chain of command to resolve the conflict fairly. Petitioner asserts his despair contributed to his discharge. Petitioner truly believe that his characterization of service should be mitigated because in its entirety, his military career was very productive, and he displayed a distinguish body of work during multiple missions in [REDACTED]. Petitioner claims he answered the nation's call to arms during a time of war without reservation and performed exemplary during one of our country's darkest and most divisive times. Petitioner states he had the intention on making the Marine Corps a career until he was placed in a precarious position through no fault of his own. Petitioner claims he was wronged by his supervisor during a time and place where racist Jim Crow sentiments prevailed in the late 1960s into the early 1970s.

f. For purposes of clemency consideration, Petitioner provided a copy of his Department of Veterans Affairs (VA) Decision Document.

g. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

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There is no evidence that he was diagnosed with a mental health condition in military service. However, his misconduct of UA and disobedience did begin after his return from a combat deployment. It is possible to consider his misconduct as behavioral evidence of undiagnosed symptoms of irritability and avoidance associated with PTSD. Temporally remote to his military service, the VA has granted service connection for PTSD.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the Petitioner to attribute his misconduct to PTSD."

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board noted Petitioner's misconduct and does not condone his actions; which subsequently resulted in a BCD. However, in light of references (b) through (e), to include the favorable AO, 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)."

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

#### RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 6 November 1970, changing his characterization of service to "General (Under Honorable Conditions)."

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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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 Regulations, 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.

10/22/2024

