



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

██████████
Docket No. 4664-24

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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of ██████████

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 change to her late husband's (SM) characterization of service.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 23 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 SM's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to the AO, she 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 regulation 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. SM enlisted in the U.S. Marine Corps and began a period of active duty on 14 December 1972.

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d. On 6 June 1974, SM requested assistance through his congressional representative regarding him and his wife losing their child three months prior. SM then began a period of unauthorized absence (UA) on 30 July 1974 and ended on 19 August 1976.

e. On 27 September 1976, SM requested a discharge for good of the service with an Other Than Honorable characterization of service. In endorsing the request, SM's defense counsel disclosed SM was pending civilian adjudication for receiving stolen property.

f. SM started another period of UA on 26 September 1976 that lasted until 22 November 1976.

g. SM received non-judicial punishment (NJP) on 7 December 1976, for failure to go to his appointed place of duty. On 26 December 1976, SM received his second NJP for his 58 days UA. Ultimately, SM request for discharge was approved and he was so discharged on 30 December 1976.

h. Petitioner contends the following injustices warranting relief:

(1) SM's discharge after desertion was due to the death of their child; and

(2) SM's mental health impact of his child's death had a drastic effect on him while serving; and

(3) The majority of the family's time was spent drinking the contamination water at [REDACTED] and at the time of SM's pending court-martial and discharge, the contamination and its affects were not public.

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided SM's death certificate and official military records.

j. 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:

The Petitioner has provided no additional medical evidence in support of [her] claims. While it is possible that the [SM] may have chosen to UA in anger and grief, it is difficult to attribute his lengthy absence solely to mental health concerns, particularly given his statements that he was supporting his family and building a small business. It is also difficult to attribute receipt of stolen goods to a mental health condition incurred after the loss of a child.

The AO concluded, "it is my clinical opinion there is post-service evidence from the Petitioner of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute [SM's] misconduct solely to a mental health condition."

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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.

The Board found no error in SM's OTH characterization of service discharge for separation for misconduct. However, because the claim for relief in whole or in part upon a mental health condition (MHC), the Board reviewed her application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to SM's MHC and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO there is post-service evidence of a mental health condition that may be attributed to military service. In applying liberal consideration to SM's mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e).

In this regard, the Board considered, among other factors, the mitigating effect of SM's mental health condition and the effect the death of his child may have had upon his misconduct. After thorough review and weighing the nature of SM's misconduct against the mitigating factors in his case, the Board determined, purely as a matter of clemency, the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN). Based on the same rationale, the Board also concluded that Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a Secretarial Authority separation.

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 service 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 SM's conduct outweighed the positive aspects of his military record, even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate. In making this determination, the Board further noted that SM's overall trait average was below what was required to be considered for an Honorable character of service. Additionally, the Board determined SM's assigned reenry code remains appropriate in light of his extensive record of misconduct. Ultimately, the Board determined any injustice in SM's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on SM's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 30 December 1976, indicating that SM's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF1," characterization of

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service was “General (Under Honorable Conditions)” and the separation authority was “MARCORSEPMAN Par 6214.”

That no further correction action be taken on Petitioner’s naval record.

That a copy of this record of proceedings be filed in Petitioner’s naval record.

4. It is certified that 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.

11/15/2024

