



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

██████████
Docket No. 5915-24
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 18 Oct 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 for an upgrade of his characterization of service.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 11 December 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). 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, 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 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. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 1 August 1983.

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d. On 19 September 1985, he received non-judicial punishment (NJP), for assaulting a non-commissioned officer. On 12 December 1985, Petitioner was issued a counseling warning for writing worthless checks and was further warned, failure to take corrective action may result in administrative separation or judicial proceedings.

e. On 24 March 1986, Petitioner received his second NJP for two specifications with intent to defraud make a check without sufficient funds and failure to pay just debts. Petitioner was issued a second counseling warning concerning his financial irresponsibility and ordered to financial counseling through Family Services Center.

f. On 10 April 1986, Petitioner received his third NJP for assault on another Marine. In June 1986, Petitioner received his fourth NJP for unauthorized absence (UA).

g. Consequently, the Petitioner was notified of administrative separation processing for misconduct pattern of misconduct. After Petitioner waived his rights, the Commanding Officer made his recommendation to the Separation Authority (SA) that he be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and Petitioner was so discharged on 1 October 1986.

h. Petitioner contends the following injustices warranting relief:

(1) He was sexually harassed by a staff sergeant and when he reported it nothing happen;

(2) That the staff sergeant would have other NCO's write him up for violations of the UCMJ; and

(3) The staff sergeant tried to touch him inappropriately one day and he pushed his hand back. When Petitioner went to report it, the staff sergeant came in cursing and yelling saying that he was assaulted by the Petitioner.

Petitioner also checked the "Other Mental Health" box on his application.

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement, five advocacy letters, and excerpts from his military record.

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:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a 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 or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his

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separation) would aid in rendering an alternate opinion diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

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

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief.

The Board does not condone Petitioner's misconduct and found no error in his OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his sexual harassment, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed sexual harassment and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO that there is insufficient evidence to attribute his misconduct to a mental health condition. However, in applying liberal consideration to Petitioner's mental health condition from sexual harassment and any effect that it may have had upon his misconduct, the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e).

After thorough review and weighing the nature of Petitioner's misconduct against the mitigating factors in his case, the Board determined, purely as a matter of clemency and equity, the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN). Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code should be changed 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 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 Petitioner'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. Ultimately, the Board determined any injustice in Petitioner'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 Petitioner's naval record in the interests of justice:

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That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 1 October 1986, he was issued a "General (Under Honorable Conditions)" discharge, under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1," and an "RE-1J" reentry code.

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.

1/8/2025

