



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

██████████
Docket No. 5935-24

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) USECDEF Memo of 25 Jul 18 (Wilkie Memo)
(c) USECDEF Memo of 25 Aug 17 (Kurta Memo)
(d) SECDEF Memo of 13 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion, 26 September 24

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps Reserves, filed enclosure (1) requesting upgrade of his discharge to Honorable (HON), or in the alternative, General (Under Honorable Conditions)(GEN), change his separation authority and narrative reason for separation to those less derogatory, such as Secretarial Authority, and update his separation and reenlistment codes to reflect the changed characterization of service and narrative reason for separation. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 4 November 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board considered enclosure (4), an advisory opinion (AO) furnished by qualified mental health provider, and Petitioner's response to the AO.

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.

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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 20 June 1994. On 7 November 1997, he immediately reenlisted for four years. He again immediately reenlisted on 21 October 2003.

d. On 26 January 2005, Petitioner received non-judicial punishment (NJP) for insubordinate conduct toward a non-commissioned officer and communicating a threat. On 3 October 2005, he received administrative counseling for failure to meet support obligations for his dependent child. Shortly thereafter, on 17 October 2005, he again received administrative counseling for failure to obey an order or regulation, specifically, an order of support dated 4 October 2005. He was also counseled for unauthorized absence (UA) from 0730 on 14 October to 1100 on 15 October 2005.

e. On 11 May 2007, Petitioner entered into a pre-trial agreement to plead guilty at NJP to two occurrence of orders violations for wrongfully misusing his government travel card (totaling \$10,492) and writing checks without sufficient funds. That same day, he was found guilty at NJP for those two offenses. Consequently, he was notified of administrative separation processing by reason of misconduct - pattern of misconduct. After waiving his rights in the process, he was discharged with an Other Than Honorable (OTH) characterization of service on 23 July 2007. Upon his discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that did not document his period of continuous Honorable service from 20 June 1994 to 20 October 2003.

f. Petitioner contends his request for relief falls within the intentions of the Hagel Memo as applied to PTSD cases. For the purpose of clemency and equity consideration, Petitioner provided a legal brief with exhibits, including a personal statement, a medical consult for insomnia, and evidence of his Joint Service Achievement Medal.

g. As part of the Board's review, the Board considered enclosure (4). The AO states in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His Depression diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Temporally remote to his military service, the VA has granted service connection for PTSD.

It is possible that symptoms identified as depression in service have been re-conceptualized as PTSD with the passage of time and increased understanding. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct. Although his misconduct does occur after his combat deployment, the Petitioner denies engaging in much of his misconduct.

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Additionally, there are some discrepancies between the Petitioner's current report of his in-service financial mismanagement and his service record that raise questions regarding his candor. It is difficult to attribute the in-service reports of his chronic and excessive financial mismanagement to mental health symptoms. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) may aid in rendering an alternate opinion.

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

In response to the AO, the Petitioner provided supporting documentation that supplied additional clarification of the circumstances of his case. After reviewing the rebuttal evidence, the AO remained unchanged.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as noted by the Board, Petitioner's DD Form 214 does not document his period of continuous Honorable service and requires correction.

Regarding Petitioner's request to upgrade his characterization of service and change his basis for separation and reentry code, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (d). These included, but were not limited to, Petitioner's previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct, and the fact that it showed complete disregard for the welfare of his dependent child. The Board also found that his repeated misconduct showed a complete disregard for military authority and regulations. Further, the Board concluded that [REDACTED] already received a large measure of clemency when the convening authority agreed to impose NJP in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. Additionally, the Board concurred with the AO and determined that, although there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to Petitioner's military service, there is insufficient evidence to attribute his misconduct to PTSD or another mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the

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Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting the requested relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 23 July 2007, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 20JUN1994 TO 20OCT2003."

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

That no further changes be made to Petitioner's 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.

11/27/2024

