



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

Docket No. 5963-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF
XXX XX [REDACTED] 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 20 Sep 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 [REDACTED], reviewed Petitioner's allegations of error and injustice on 18 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 30 December 2002.

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d. Petitioner deployed to [REDACTED] from 7 July 2004 until 5 February 2005. On 13 December 2004, Petitioner was issued a counseling warning for failure to follow order concerning the application of proper weapons condition code, which resulted in a negligent discharge of his weapon. On 14 January 2005, Petitioner received non-judicial punishment (NJP) for failure to obey a lawful general order by possessing alcohol.

e. Petitioner received his second NJP, on 27 September 2005, for failure to obey an order and make a false official statement.

f. Petitioner deployed to [REDACTED] from 13 December 2005 until 8 March 2006.

g. On 14 July 2006, the Petitioner was convicted by a special court-martial (SPCM) of Article 121, for larceny of cigarettes from an Iraqi store and Article 130, for unlawfully entering a store with the intent to commit a criminal offense. Petitioner was sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). On 9 August 2006, Petitioner received his third NJP for absenting himself from his place of duty.

h. After completion of all levels of review, Petitioner was discharged with a BCD on 30 November 2007.

i. Petitioner contends he was the only person involved to receive a punitive discharge. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement, OMPF documents, medical records, and 15 advocacy letters.

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 he was diagnosed with a mental health condition in military service, although his misconduct began after his first combat deployment. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as he denies have engaged in the behavior. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's 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 from of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD."

CONCLUSION

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

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The Board found no error in Petitioner's BCD characterization of service discharge due to his SPCM conviction. However, because Petitioner based his claim for relief in whole or in part upon his Post-traumatic stress disorder (PTSD), the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claim of PTSD 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 of a diagnosis of PTSD and insufficient evidence to attribute his misconduct to PTSD. In applying liberal consideration to Petitioner'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). After thorough review, the Board found that Petitioner's claim of PTSD did not have an effect on his misconduct and the mitigating circumstances of his claim of PTSD.

The Board considered the Petitioner's contention that he was the only one to receive a punitive discharge, which was an issue brought in front of the U.S. Navy-Marine Corps Court of Criminal Appeals. In reviewing the record, the Board concluded that although he was the only one to receive the punitive discharge as reflected in the U.S. Navy-Marine Corps Court of Criminal Appeals decision, his previous misconduct prior to the special court-martial provided a rationale basis for this disparity in sentences. The Board agreed with the court's decision and found no error.

Notwithstanding the Board's conclusions that no error exists with Petitioner's assigned BCD or that his mental health condition did not mitigate his misconduct, it determined it was in the interest of justice to grant relief. The Board does not condone the Petitioner's misconduct and determined his assigned punishment at his SPCM was appropriate at the time. However, the Board took into consideration Petitioner's two deployments to [REDACTED], his receipt of the combat action ribbon, and the 15 advocacy letters when making their recommendation. The Board noted these advocacy letters are from Marines who served with him in combat who universally opined that Petitioner excelled as a leader while in service, participated in numerous firefights, and had post service good character. Therefore, 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, 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, and separation 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. In making this determination, the Board further

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noted that Petitioner's overall trait average was below what was required to be considered for an Honorable character of service.

Finally, the Board also concluded Petitioner's assigned reentry code remains appropriate in light of his record of misconduct and unsuitability for further military service. 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:

That Petitioner be issued a new DD Form 214 indicating that, for the period ending 30 November 2007, his characterization of service was "General (Under Honorable Conditions)," narrative reason for separation was "Secretarial Authority," SPD code was "JFF1," and 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.

1/20/2025

