



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

██████████  
Docket No. 7040-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████  
██████████ XXX XX ██████████ USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) USD Memo, 25 Aug 17 (Kurta Memo)  
(c) Petitioner's Case File

Encl: (1) DD Form 149  
(2) Advisory Opinion, 3 Jan 25

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 that his naval record be corrected by placement on the Permanent Disability Retired List (PDRL) at a rating of at least 30%, providing Petitioner any and all back pay dating to the appropriate effective date of his medical retirement, or alternatively, referring Petitioner's case back to the Disability Evaluation System (DES) for evaluation for medical retirement.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 30 January 2025 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 relevant portions of the naval record, and applicable statutes, regulations, and policies to include reference (b) as well as the enclosure (2) advisory opinion (AO) furnished by a qualified medical professional. The AO 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner began active duty service in the United States Marine Corps on 9 October 2002. On 23 August 2004, Petitioner underwent non-judicial punishment (NJP) for underage drinking. On 4 October 2004, he commenced his first deployment in support of Operation Iraqi Freedom that lasted until 7 February 2005. Petitioner deployed to ██████████ a second time from 3 September

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2006 until 26 March 2007. Petitioner underwent a third deployment in support of Operation Enduring Freedom [REDACTED] from 21 November 2010 until 12 June 2011. Petitioner deployed a fourth time from 12 May 2012 until November 2012; when he was pulled back home due to his wife's pregnancy complications. Petitioner's wife delivered twin sons in December 2012. Petitioner states he "began having extreme difficulty dealing with kids crying, screaming, and dealing with wife's need for help. [He] was unsure of how to help her and became increasingly irritated, easily agitated and angered...began withdrawing from everyone...started to hold [his] children's mouths shut so they could not scream." Petitioner further states that he had "regret from coming home early, leaving my team, platoon in [REDACTED],"

c. On 28 January 2013, Petitioner underwent psychiatric evaluation at the emergency department at Naval Hospital [REDACTED]. He was diagnosed with substance induced mood order, and Major Depressive Disorder (MDD). Due to his use of alcohol and possession of lethal weapons, he was psychiatrically admitted. He was subsequently hospitalized in a 30 day Dual Diagnosis Program for Alcohol Use Disorder and Post Traumatic Stress Disorder (PTSD) at [REDACTED] Hospital. Upon release, he was evaluated at [REDACTED] and referred to Neurology after noting that he had exposure to over 60 blasts within 25 meters during deployments and significant IED exposure on two occasions with 500 and 100 pound bombs detonated in proximity (in building / under MRAV patrol vehicle). Petitioner was diagnosed with Traumatic Brain Injury (TBI) and referred to specialized TBI treatment.

d. On 23 April 2013, Petitioner was counseled that an Incident Determination Committee (IDC) substantiated an incident of child physical abuse and that he was enrolled in the DOD Central Registry Database for Domestic Abuse. Petitioner was also issued a military protective order (MPO), ordered out of his house, and directed to only have supervised visitation with children. Shortly thereafter, Petitioner's wife filed for divorce. On 5 May 2013, Petitioner was awarded NJP for adultery. Petitioner underwent a second psychiatric hospitalization which was extended from 30 days to 45 days. On 28 August 2013, Petitioner underwent a second NJP for violating Article 91 of the Uniform Code of Military Justice (UCMJ), disregarding the MPO to stay away from his home without an escort. On 17 December 2013, Petitioner was formally counseled for absence without leave; due to attending a second job without authorization from his chain in command. On 26 June 2014, Petitioner was involved in a motor vehicle accident and charged with DWI.

e. On 2 July 2014, Petitioner's commanding officer (CO) notified Petitioner of administrative separation with a General (under Honorable conditions) due to Misconduct-Serious Offense. On 14 July 2014, Petitioner was referred to the Disability Evaluation System for PTSD. On 26 August 2014, the administrative separation board recommended by majority vote that Petitioner be separated from the Marine Corps with the recommended characterization of service of General (Under Honorable Conditions). Petitioner was so discharged on 29 September 2014. On 29 September 2015, the Department of Veterans Affairs (VA) granted Petitioner service connection for 17 conditions; to include PTSD with TBI (at a 70% rating) for a combined rating evaluation of 100% Permanent and Total.

f. Petitioner contends he should have been medically retired for PTSD and TBI as he was unable to execute the requirements of his military rate and rank as evidenced by recurrent severe

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suicidal ideation, multiple psychiatric hospitalizations, and severe alcohol distress. Petitioner further argues he was improperly not referred to the Disability Evaluation System as there was ample evidence that he was suffering from a range of psychological and medical conditions. To support this contention, Petitioner provided a personal statement and VA medical documents.

g. The Board sought an advisory opinion (AO) from a qualified medical professional regarding Petitioner's request. The AO stated in pertinent part:

After considered review of the available objective clinical and non-clinical evidence, in my medical opinion, there exists sufficient evidence that at the time of his administrative separation for misconduct, Petitioner suffered from medical and mental health conditions, specifically PTSD, TBI, and Alcohol Use Disorder that interfered with his ability to carry out the responsibilities of his rank, rate, and assigned duties and mitigated his in-service misconduct behaviors.

Should consideration of Petitioner's request for relief be granted, it is recommended Petitioner be referred to the Physical Evaluation Board for consideration of placement on the Permanent Disability Retired List (PDRL) for:

1. Post Traumatic Stress Disorder (TBI as a Category II condition), VA Code 9411, permanent and stable, combat related (CR), combat zone (CZ) at a disability evaluation to be determined.

The AO concluded, "in my medical opinion, the preponderance of objective clinical evidence provides sufficient support for Petitioner's contention that at the time of his discharge he was unfit for continued military service and should have been referred to the DES for evaluation of fitness for continued service and consideration for possible medical retirement."

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. The Board concurred with the AO and found there was significant evidence Petitioner was not fit for continued military service after his fourth deployment as a result of the conditions of PTSD with TBI and should have been referred into DES prior to administrative separation processing.

The Board, however, concluded the Petitioner should be placed on the Temporary Disability Retired List (TDRL) effective the date of separation for the condition of PTSD with TBI. While the Board carefully considered the medical evidence provided, it determined it was in the interests of justice to have the Physical Evaluation Board make a final adjudication.

## RECOMMENDATION

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

That Petitioner be placed on the Temporary Disability Retired List, effective the date of his separation, for Post Traumatic Stress Disorder (TBI as a Category II condition), VA Code 9411,

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at a 70% rating, combat related (CR), combat zone (CZ).

Note: Headquarters Marine Corps will correct any other entries affected by the Board's recommendation and will issue a DD Form 215 or a new DD Form 214, whichever one they deem appropriate, that reflects the Board's corrective action.

The Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

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

That no further changes be made to Petitioner's naval 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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

2/27/2025

