



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

██████████
Docket No. 7514-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) USD Memo of 25 August 2017 (Kurta Memo)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 4 April 2025 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 also considered 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.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the U.S. Marine Corps and began a period of active service on 12 December 2002. Petitioner's enlistment physical examination, on 22 September 2001, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, or history. On 13 June 2002, Petitioner signed and acknowledged the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs."

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d. Petitioner deployed in support of Operation Iraqi Freedom between 4 March 2004 and 3 October 2004.

e. On 24 January 2005, Petitioner's command placed a "Page 11" counseling entry (Page 11) documenting his dependency on alcohol. The Page 11 advised him to enroll in "AA" and "ATF," and noted the Petitioner was seen by a substance abuse counselor on 20 January 2005.

f. On 9 March 2005, Petitioner's command issued him a Page 11 documenting his negligence in using his Armed Forced ID Card.

g. On 15 July 2005, Petitioner's command issued him a Page 11 counseling him for being absent without leave from his Company driven Physical Fitness Test (PFT). The Page 11 documented that Petitioner was given several opportunities to fall out and still failed to show up to the PFT, and that it was believed he missed the PFT due to drinking. The Page 11 advised Petitioner to enroll in the ATF program upon arrival from deployment. Petitioner did not elect to submit a Page 11 rebuttal statement.

h. Petitioner redeployed in support of Operation Iraqi Freedom between 19 July 2005 and 11 February 2006.

i. On 14 August 2005, Petitioner received non-judicial punishment (NJP) for: (a) failing to obey a lawful order or regulation by getting a neck tattoo, and (b) insubordinate conduct towards senior Marines and his Platoon Commander. Petitioner did not appeal his NJP.

j. On 17 February 2006, Petitioner received NJP for being absent from his appointed place of duty. Petitioner did not appeal his NJP.

k. On 24 February 2006, a Navy Drug Screening Laboratory message indicated the Petitioner tested positive for cocaine.

l. On 10 March 2006 Petitioner's command notified him of administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his rights (in writing) to consult with counsel and to request a hearing before an administrative separation board.

m. On 10 March 2006 Petitioner's commanding officer (CO) recommended to the Separation Authority (SA) that Petitioner receive an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation, the Petitioner's CO stated, in part:

I have personally interviewed [REDACTED], reviewed the enclosures and spoken with his chain of command concerning his situation. [REDACTED] obtuse behavior and disregard for orders and regulations make him unfit for further service in the Marine Corps. His daily presence in the Battalion proves destructive to good order and discipline. I recommend that the respondent be administratively separated from the Marine Corps with an other than honorable characterization of service.

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n. In the interim, on 20 April 2006, pursuant to his pleas Petitioner was convicted at a Summary Court-Martial (SCM) of the wrongful use of a controlled substance (cocaine). Petitioner's SCM sentence included a reduction in rank to Private (E-1), forfeitures of pay, and confinement for thirty (30) days. The Convening Authority approved the SCM sentence.

o. On 23 May 2006, Petitioner refused an alcohol abuse screening for purposes of being offered substance abuse rehabilitation treatment.

p. On 17 July 2006, the Staff Judge Advocate for the SA concluded that Petitioner's separation proceedings were legally and factually sufficient. On 18 July 2006, the SA approved and directed Petitioner's discharge for misconduct due to drug abuse with an OTH discharge characterization.

q. On 28 July 2006, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and was assigned an RE-4B reentry code.

r. A licensed clinical psychologist (Ph.D.) reviewed Petitioner's contentions and the available records and issued an AO dated 11 December 2024. As part of the Board's review, the Board considered the AO. The AO stated, in pertinent part:

Petitioner submitted 39 character reference letters in support of his claim. He submitted a letter from a psychologist dated August 2021 noting diagnoses of PTSD and the opinion that substance abuse followed symptoms thereof. He submitted a second letter from a psychologist dated October 2021 noting six sessions of treatment ensued for Petitioner's diagnosis of PTSD. Active duty and post-service medical records were submitted as well as VA compensation and pension rating noting service-connection for treatment purposes only for PTSD. Additionally, he submitted post-service accomplishments, disability paperwork and scholarly articles in support of his claim.

There is evidence that the Petitioner was diagnosed with PTSD at the very end of his service while in the brig. Additionally, he submitted compelling character references of prior leadership and fellow Marines who knew and deployed with him while in service. Their accounts are congruent in that they detail highly kinetic and traumatic periods of deployment that were also met with death of friends and colleagues in combat. Substance use and abuse are commonly associated correlates with PTSD; however, knowingly and willingly exhibiting disrespect, and getting an unauthorized neck tattoo is not typical behavior caused by symptoms of PTSD.

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

In response to the AO, Petitioner submitted additional evidence in support of his application. Following a review of Petitioner's AO rebuttal evidence, the Ph.D. did not change or otherwise modify their AO.

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s. Petitioner requested liberal consideration and clemency in the form of a discharge upgrade and other ancillary relief. In short, Petitioner contended he was suffering from post-traumatic stress disorder (PTSD) following two separate combat deployments in [REDACTED]. Petitioner requested that the Board grant liberal consideration that his PTSD-related mental health considerations mitigated the behavior leading to his discharge, and were not outweighed by the seriousness of his cumulative misconduct. Petitioner further requested relief based on Wilkie Memo clemency considerations. For the purpose of clemency and equity consideration, the Board considered the totality of Petitioner's application.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board initially determined that Petitioner's administrative separation for misconduct was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the Petitioner's drug use and cumulative misconduct, the Board felt that Petitioner's PTSD and resulting symptoms mitigated some of the misconduct used to characterize his discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors in the misconduct contributing to his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been with an OTH, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) and no higher, based on liberal consideration of mental health considerations is appropriate at this time. In addition, based on the same rationale, the Board also concluded that Petitioner's reason for separation, with the exception of his 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 Honorable discharge characterization. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board determined the record reflected that Petitioner's misconduct was intentional and demonstrated he was unfit for further service. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

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The Board concluded that Petitioner's request to change his narrative reason and related separation code to "completion of required active service," was without merit. Given that the Board determined Petitioner's separation was legally and factually sufficient, the Board declined to describe Petitioner's service in any way as having completed his contracted term of service in the absence of serving his entire enlistment.

Lastly, the Board did not find a material error or injustice with the Petitioner's original RE-4B reenlistment/reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code on Petitioner's DD Form 214 was entirely proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. However, the Board determined that in keeping with the ultimate relief granted below and Petitioner's unsuitability for further military service, that his reentry code warranted a change from RE-4B to "RE-4," thus removing any stigma with a USMC reentry code specifically related to drug abuse.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, for the period ending 28 July 2006, indicating Petitioner was discharged with a "General (Under Honorable Conditions)" character of service, separation authority of "MARCORSEPMAN par. 6214," separation code of "JFF1," narrative reason for separation should of "Secretarial Authority," and a reentry code of "RE-4."

That Headquarters, U.S. Marine Corps review Petitioner's complete service records to determine any additional decorations, medals, awards, badges, citations, and campaign ribbons Petitioner may be authorized or entitled to receive and add any changes to the new DD Form 214, as required.

That a copy of this report of proceedings be filed in 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

4/15/2025

