



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

██████████
Docket No. 9331-24

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████

██████████ 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 14 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 for an upgrade of his characterization of service.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 12 March 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, 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 20 October 1992. Petitioner was discharged on 30 April 1993 with an Honorable

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characterization of service for Erroneous Enlistment for failure to meet regular physical standards for enlistment.

d. Petitioner enlisted in the U.S. Marine Corps on 18 February 2002 and, after a period of continuous Honorable service, immediately reenlisted on 14 October 2005.

e. Petitioner deployed to [REDACTED] from 25 January 2003 until 20 March 2003. Petitioner deployed to [REDACTED] from 13 March 2003 to 13 May 2003. Petitioner also deployed onboard [REDACTED] from 13 May 2003 until 24 July 2003. Petitioner again deployed to [REDACTED] from 20 September 2005 until 21 February 2006.

f. On 6 February 2006, the Petitioner was convicted by a special court-martial (SPCM) of two specifications of Article 92 and a single specification of Article 134. Petitioner was sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). After completion of all levels of review, Petitioner was so discharged on 12 September 2007. Upon his discharge, Petitioner was issued a DD Form 214 that did not annotate his period of continuous Honorable service from 18 February 2002 to 13 October 2005.

g. Petitioner contends that his medical record reflects he was diagnosed with PTSD prior to his SPCM and discharge and has been recently diagnosed with a TBI as a result of his combat. Petitioner further contends that had these issues been properly diagnosed and treated, he would have requested a medical discharge instead of reenlisting. For purposes of clemency and equity consideration, the Board noted Petitioner provided a four advocacy letters, a doctor's letter, and other medical documents.

h. 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 evidence that he was diagnosed with PTSD from combat exposure while in military service. Temporally remote to his military service, VA clinicians have also diagnosed TBI. While it is possible that dereliction of duty and disobedience could be attributed to symptoms of irritability associated with PTSD, his diagnosis was known during his legal process and likely considered. Additionally, it is difficult to attribute obstruction of justice to PTSD or TBI.

The AO concluded, "it is my clinical opinion that there is in-service evidence of a diagnosis of PTSD that may be attributed to military combat exposure. There is post-service from the VA of a diagnosis of TBI attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or TBI."

CONCLUSION

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

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

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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 to attribute his misconduct solely to PTSD or TBI. The Board also agreed with the AO that Petitioner's diagnosis was known during his legal process and likely considered. 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.

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. While the Board does not condone the Petitioner's misconduct and determined his assigned punishment at his SPCM was appropriate at the time, it took into consideration Petitioner's deployments to Iraq and Kuwait, his receipt of the combat action ribbon, and the four advocacy letters when making their recommendation to grant the requested relief.

The Board noted these advocacy letters are from Marines who served with him and included one from a commanding officer that opined that the Petitioner was in the top one percent of the Marine NCO's he observed during his career. 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, As noted above, Petitioner's DD Form 214 fails to document his continuous Honorable service and requires correction.

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. Finally, the Board determined Petitioner's reason for separation and reentry code remain appropriate in light of his of misconduct. 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 12 September 2007, his characterization of service was "General (Under Honorable Conditions)"

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and Block 18. include the remarks "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 18 FEB 2002 to 13 OCT 2005."

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.

3/31/2025

