



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

■  
Docket No. 11351-24  
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) 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

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 to Honorable and change his narrative reason for separation.

2. The Board, consisting of ■, ■, and ■, reviewed Petitioner's allegations of error and injustice on 23 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, applicable statutes, regulations, and policies, to include references (b) through (e). The Board also considered enclosure (3), an advisory opinion from a qualified mental health professional 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 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 Marine Corps and began a period of active duty on 19 September 2005.

d. On 10 October 2006, Petitioner was found guilty by a special court-martial (SPCM) of

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a period of unauthorized absence totaling 194 days. As punishment, Petitioner was sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD).

e. Subsequently, upon the completion of appellate review in Petitioner's case, he was so discharged from the Marine Corps on 11 September 2007.

f. Petitioner previously applied for a discharge upgrade to this Board and was denied on 12 February 2014.

g. Petitioner contends the following injustices warranting relief:

(1) His discharge is inequitable and should be upgraded;

(2) His actions did not harm or maim anyone since he did not use or traffic in drugs and was not involved in any disruptive actions that should follow him for life;

(3) The Marine Corps did not offer him rehabilitation nor did they offer him the opportunity to demonstrate his ability to retrain or demonstrate his ability to contribute;

(4) His defense counsel strongly recommended for him to be retrained and rehabilitated;

(5) His request is supported by his presentation of hardship, mental health issues involving his mother's illness, his brother's loss of employment, and threats made toward his brother and parents;

(6) His upbringing and what he perceived as major threats to his family caused him to ignore his contract with the Marine Corps and leave without proper authority to help his family;

(7) His naïve mistake based on his mental health reasoning did not involve a capital offense;

(8) His discharge is "capital punishment" which has impacted him on his attempts to demonstrate his devotion to service, community and country, and should be upgraded;

h. For purposes of clemency and equity consideration, the Board considered the documentation Petitioner provided in support of his application.

i. As part of the Board's review, a qualified mental health professional reviewed Petitioner's contentions and the available records 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, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his

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misconduct. Additional records (e.g., 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, "There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the Petitioner's misconduct to a mental health condition."

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

## CONCLUSION

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

The Board found no error in Petitioner's BCD discharge. However, because Petitioner based his claim for relief in whole or in part upon his Other Mental Health Condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) through (e). Even though the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence to attribute the Petitioner's misconduct to a mental health condition, they also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice, as a matter of clemency, in accordance with reference (e).

In this regard, the Board considered, among other mitigating factors, Petitioner's post-service record of employment and academic accomplishment, the letters of support attesting to his character, Petitioner's relative youth and immaturity at the time of his misconduct, Petitioner's proactive efforts to atone for his mistake, and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Board found that clemency is warranted in the form of an upgrade of his characterization of service to General (Under Honorable Conditions) (GEN).

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 Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining 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. Additionally, the Board determined Petitioner's basis for separation and reentry code remain appropriate in light of his record of misconduct. Ultimately, the Board determined that 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

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Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 11 September 2007, Petitioner's characterization of service was "General (Under Honorable Conditions)."

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.

5/8/2025

