



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 327-25

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) dtd 29 May 25
(3) Rebuttal to AO dtd 27 Jun 25

1. Pursuant to the provisions of reference (a), Service Member's (SM) spouse, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that SM's punitive discharge be upgraded either to "Honorable" and that his narrative reason for separation and be changed to reflect Secretarial Plenary Authority.

Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 29 September 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 SM's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered enclosure (2), the advisory opinion (AO) furnished by qualified mental health provider, and enclosure (3), 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. Although Petitioner did not file her application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. SM enlisted in the Marine Corps and began a period of active duty on 23 February 1965.

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- c. He deployed to the [REDACTED] from 24 July 1966 through 2 August 1967; during which time he participated in multiple combat operations.
- d. SM incurred an initial period of unauthorized absence (UA) beginning 9 October 1967. His UA lasted for eight days and was terminated, on 17 October 1967, after a reported accident during which he shot his left leg with a .22 caliber rifle while purportedly attempting to eject a round from the chamber.
- e. He incurred two additional periods of UA spanning 51 days from December 1957 through February 1968 and 61 days from April 1968 to May 1968.
- f. On 3 July 1968, SM was convicted by Special Court-Martial (SPCM) for a single charge and specification of violation of Article 86 of the Uniform Code of Military Justice (UCMJ). His sentence included reduction to the lowest paygrade of E-1 and three months confinement at hard labor with concurrent forfeitures of pay.
- g. SM incurred two more periods of UA; spanning 103 days from October 1968 through February 1969 and 41 days from February 1969 to March 1969.
- h. Following his return from the last UA period, he was involved in an incident which resulted in referral of charges to General Court-Martial. Specifically, a racially-charged incident involved allegations of attempted larceny through means of violence and force, and assault by SM and several minority Marines against several non-minority Marines. Further, during the course of the confrontation, SM was approached by a plain-clothes individual, that claimed to have identified himself as a manager of Criminal Investigative Division, who attempted to apprehend SM. In the course of this attempted apprehension, the Marine alleged that SM had resisted arrest and threatened to kill him and his spouse.
- i. SM was assigned detailed military defense counsel (DC). This DC was also assigned to defend a witness of SM's alleged offenses on charges unrelated to Petitioner's case.
- j. During the General Court-Martial (GCM) proceedings, the DC informed the military judge (MJ) of the potential conflict of interest with respect to him having been assigned to simultaneously represent a Marine, in a different matter, who was also a witness / alleged victim in the case against SM. However, as he negotiated a pre-trial agreement on SM's behalf, which would obviate the government's need to call his other client as a witness during the GCM trial proceedings, he believed that his representation would not prejudice SM and was, therefore, not a conflict of interest. The MJ allowed the trial to proceed.
- k. During the GCM trial proceedings, the MJ conducted an inquiry to determine whether SM could plead providently to the charges and specifications. Ultimately, the MJ rejected SM's pleas of guilty¹ and determined that trial would have to proceed on the merits.

¹ SM's responses during this inquiry strongly indicated his belief that he had acted in self-defense after being hit with a pipe by the same Marine his defense counsel was representing in a separate matter.

1. Although his initial assessment regarding conflict of interest had been premised upon the PTA avoiding the need for witnesses to testify on the merits, SM's military defense counsel argued that he could continue to represent SM even after his PTA had been rejected. Thus, he continued to represent SM as his case proceeded on its merits, while also continuing to represent a witness in the allegations against him in a separate criminal matter.
 - m. At trial, SM's defense counsel presented only his own testimony in his defense without calling other witnesses.
 - n. SM was convicted by the MJ for one specification² under Article 80 of the UCMJ for attempting, by means of violence and force, to steal, one specification under Article 95 of resisting lawful apprehension, three specifications under Article 128 for assault upon three separate corporals, and one specification under Article 134 for wrongfully communicating a threat to kill.
 - o. The MJ sentenced SM to seven years confinement at hard labor with total forfeitures of pay and allowances and a Dishonorable Discharge (DD).
 - p. SM's Armed Forces of the United States Report of Transfer or Discharge (DD Form 214 MC) was issued with a characterization of under Other Than Honorable conditions and an effective date of discharge on 26 December 1969.³
 - q. On 3 April 1970, the GCM Convening Authority (CA) approved only so much of the sentence as provided for confinement at hard labor for five years with total forfeitures and a DD.
 - r. On 23 December 1970, the Navy Clemency Board reduced the period of confinement and forfeitures by six months. On 15 January 1971, that portion of the sentence providing for confinement at hard labor and forfeitures in excess of four years and six months was remitted.
 - s. On 29 January 1971, the U.S. Navy Court of Military Review (NCMR) reviewed SM's assignments of error. NCMR found that the specification regarding the attempted robbery failed to allege an offense and dismissed that charge and specification. Upon conclusion of review, NCMR affirmed only so much of the sentence as provided for confinement at hard labor for one year, with total forfeitures, and a Bad Conduct Discharge.
 - t. SM's appeal [petition for further review] was denied on 14 June 1971.
 - u. Petitioner contends that SM's multiple periods of UA following his combat tour in [REDACTED] resulted in post-traumatic stress disorder, causing feelings of hopelessness and

² SM was found not guilty of two specifications.

³ Despite the effective date, it is clear that his DD Form 214 was prepared after the NCMR review of SM's GCM findings and sentence, because the discharge certificate issued was a DD 259 MC, which was a certificate for a Bad Conduct Discharge, whereas a Dishonorable Discharge would have been identified by a DD 260 MC.

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depression, and culminating with his [unsuccessful] attempt to take his own life by shooting himself. Additionally, she contends that SM's GCM trial proceedings were marred by procedural irregularities, a conflict of interest by his DC, conflicts of fact in the testimony due to systemic racism, and disproportionate treatment due to prevailing racial attitudes in the military in 1969; especially given that his GCM trial took place months after the 1969 race riots at [REDACTED].

Regarding the DC's conflict of interest, Petitioner submits verbatim trial records in which the MJ and DC address concerns regarding the conflict as well as evidence that current Department of the Navy regulations prohibit such representation conflicts. Petitioner further asserts that, even under the rules in place at the time, the MJ's inquiry into the conflict was inadequate, especially after SM's guilty pleas were rejected, voiding his PTA. Further, Petitioner alleges ineffective assistance of counsel in that SM's DC presented only his own testimony as defense and failed to present mitigating evidence during sentencing of SM's honorable combat service in [REDACTED]. Petitioner elaborated that the incident which resulted in SM's GCM trial was substantially similar to 160 reports of race related incidents where were documented by Marine Corps historians during the first eight months of 1969. Additionally, Petitioner provided evidence of a 1972 Department of Defense Task Force report addressing the prevalence of racism within the military justice system, acknowledging an intentional and systemic discrimination, and specifically criticizing the period of SM's service during his GCM trial.

v. On 11 April 2024, SM passed away due to a condition which is presumptively linked under federal law to his exposure to Agent Orange during his combat service.

w. In support of this request, Petitioner submitted partial active duty records, a personal statement, policy memoranda, a copy of the death certificate, post-service outpatient medical records, GCM trial and appellate records, a post-service background check, an article on the racial climate at [REDACTED] during the [REDACTED] era, a Department of Defense Task Force Report on Military Justice, a New York Times article, a House Committee Report on the [REDACTED] race riots in 1969, affidavits, Department of Veterans Affairs (VA) references on service connected conditions and presumptive disabilities, a letter from SM's physician, an article on PTSD, MJ Bench Book excerpts, American Bar Association Rules of Professional Conduct on conflicts of interest, related military case law, and a psychiatric evaluation from January of 2024 noting diagnoses of PTSD, Major Depressive Disorder, and Alcohol Use Disorder.

x. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration. The AO states in pertinent part:

The [SM's] record is sparse, however there is no evidence that the [SM] suffered from a mental health condition or that he exhibited any symptoms of a mental health condition while in military service. There is evidence that he shot himself in the leg while on UA and after his deployment to [REDACTED]. His medical record documents the event as though it was an accident, however in the [SM's] dictation post-service; he admitted that it was a suicide gesture following inability to cope with PTSD symptoms. He was diagnosed with PTSD post service and symptoms are consistent with DSM-V-TR criteria. Aggressive assault and attempted

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robbery are not consistent with traditional PTSD symptoms. Periods of UA are consistent with PTSD symptoms as avoidance of triggers and stimuli that remind one of traumatic events would be common. Additional records (e.g., active duty medical records, post-service mental health records describing the [SM's] diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of PTSD that existed in service. There is insufficient evidence to attribute all of his misconduct to PTSD or any other mental health condition."

y. Petitioner submitted a rebuttal to the AO to clarify that there was no conviction regarding the robbery allegations. The AO was amended to exclude that particular aspect of the alleged misconduct but the conclusion remained unchanged.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. The Board reviewed the application under the guidance provided in references (b) through (e).

Notwithstanding the fact the Board found no error with SM's conviction and sentence, the Board observed the modern rules of ethical conduct would have prohibited the DC's representation of SM at a trial due to a conflict of interest; specifically, that the DC was prevented from calling a material witness to testify due to the witness also being his client. As such, the Board concluded that the resulting findings and sentence of Petitioner's GCM were unjust. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating, for the period ending 26 December 1969, he was discharged with an "Honorable" characterization of service, under the authority of "MARCORSEPMAN 13261.1f," for the narrative reason of "Convenience of the Government: Other good and sufficient reason as determined by the SECNAV," and an "RE-1" reentry code.⁴

That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's record.

⁴ SPD codes were not used prior to 1970.

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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 Regulation, 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.

12/8/2025

[REDACTED]
Executive Director
Signed by: [REDACTED]