



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 4113-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER F ██████████
██████████ 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) of 5 Aug 25
(3) Rebuttal to AO dtd 4 Sep 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 discharge be upgraded, his narrative reason for separation and separation code be changed to reflect a "Secretarial Authority" discharge, and that his reentry code be change to "RE-1." Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 January 2026 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner, who submitted enclosure (3) in rebuttal.

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's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

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b. Petitioner enlisted in the Marine Corps after receiving a waiver for pre-service drug involvement and began a period of active duty on 28 January 2002.

c. On 9 December 2003, a naval message from the Naval Drug Laboratory reported Petitioner's urinalysis screening test positive for cocaine metabolites.

d. On 16 December 2003, Petitioner received nonjudicial punishment (NJP) for a single charge and specification of violating Article 112a, Uniform Code of Military Justice (UCMJ) due to wrongful use of a controlled substance. He was also issued administrative counseling advising him that he was being recommended for administrative separation as required by regulation.

e. On 22 December 2003, Petitioner completed a pre-deployment health assessment and, subsequently, deployed with his unit to [REDACTED], [REDACTED]. His post-deployment health assessment, completed on 10 November 2004, documented his experiences during the deployment to include that he had seen people wounded, killed, or dead, engaged in direct combat, felt he was in great danger of being killed, and been bothered by feeling down, depressed, or hopeless. Of note, however, his discharge record did not include a combat action ribbon.

f. On 12 May 2005, Petitioner was notified of processing for administrative separation by reason of misconduct due to drug abuse, stemming from his pre-deployment NJP. This notice stated, "I am recommending that you be retained until your EAS;" however, it was signed by the Acting Commanding Officer.

g. On 13 May 2005, Petitioner consulted legal counsel regarding his notification of administrative separation processing and elected to waive his right to a hearing before an administrative separation board. At that same time, his company commander forwarded a recommendation for his retention, mentioning Petitioner's remorse for his pre-deployment actions, his recent combat service, and his dependability and demonstration of focus in operational performance.

h. On 27 May 2005, a medical officer evaluated Petitioner and confirmed that he had experienced a substance related event and could be processed for administrative separation.

i. On 8 June 2005, contrary to the 12 May 2005 notification of separation proceedings, Petitioner's new commanding officer recommended he be discharged under Other Than Honorable (OTH) conditions.

j. On 20 June 2005, Petitioner tested positive for cocaine metabolites, and he received a second NJP on 12 July 2005.

k. The recommendation for Petitioner's separation under OTH conditions was reviewed by the Staff Judge Advocate and subsequently approved by the Commanding General. As a result, he was so discharged on 26 July 2005.

l. Petitioner contends that he has lived with chronic post-traumatic stress disorder (PTSD) since his combat experiences during deployment, where he witnessed coalition members being wounded or killed and dying. He claims that he experienced anxiety, panic attacks, trouble sleeping, and depression. He believes that his service-related PTSD mitigates his decision to use drugs as a coping mechanism. He also asserts that “his entire chain of command recommended that he be retained;” evidencing his outstanding military performance that included his deployment. He believes that his discharge is too harsh under the circumstances. In support of his request, in addition to his legal counsel’s brief and personal statement, he provided a psychiatric evaluation, two letters from peer service members, his pre and post deployment health assessments, service health records, three letters of recommendation, and case law references.

m. Because Petitioner contends a mental health condition, the Board also requested the AO for consideration. The AO stated in pertinent part:

Petitioner was evaluated during military service and denied symptoms consistent with a formal mental health diagnosis. However, in-service providers acknowledged the Petitioner had been exposed to traumatic experiences and may be experiencing symptoms that could be clinically significant at a later time. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns from a civilian provider. His diagnosis of PTSD is attributed to his military service in part. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given cocaine use prior to his combat deployment that appears to have continued after his return. 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, “it is my considered clinical opinion that there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service in part. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

n. In response to the AO, Petitioner provided additional arguments in support of his application. After reviewing the rebuttal evidence, the AO remained unchanged.

CONCLUSION:

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

The Board initially concluded Petitioner was appropriately processed for administrative separation and separated with an OTH characterization of service. While the Board carefully considered Petitioner’s contentions, it observed that Petitioner did not dispute his drug abuse. Therefore, the Board determined the presumption of regularity applies to the finding that

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Petitioner committed the misconduct that formed the basis of his administrative separation and was properly separated with an OTH characterization of service.

The Board also applied liberal consideration to Petitioner's claim that he suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which he was discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the post-discharge diagnosis provided by Petitioner. However, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by his mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and considered that Petitioner's initial drug abuse occurred prior to his deployment. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its potential effect upon his conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of Petitioner's service, to include service highlights, the non-violent nature of his misconduct, his relative youth and immaturity at the time of his misconduct, his post-discharge accomplishments, the mental health issues he has endured, the character references he provided for review, his contributions to the community, and the passage of time since his discharge.

The Board determined the command's failure to re-notify Petitioner after the new commanding officer changed his retention recommendation was an error. However, it concluded the error was harmless based on Petitioner's second NJP for drug abuse. The Board it found it improbable that re-notification, even if it resulted in a hearing, would have resulted in a different outcome from the final recommendation that Petitioner be discharged under OTH conditions given that he used wrongfully cocaine a second time.

Although the Board found that the defect in Petitioner's administrative separation proceedings was not a fatal error, the Board found that the mitigating factors presented by Petitioner were sufficient to justify partial equitable relief. Specifically, the Board considered Petitioner's positive combat deployment, current mental health issues, and his favorable evidence of post-service character and accomplishments. As a result, the Board found that the totality of favorable matters in support of clemency outweighed the drug abuse misconduct which resulted in Petitioner's discharge and assignment of an OTH characterization of service. As a result, the Board determined that it is in the interest of justice, purely as a matter of clemency, to change Petitioner's characterization of service to General (Under Honorable Conditions) and his reason for separation, separation authority, and separation code to reflect a "Secretarial Authority" discharge.

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Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. Based on Petitioner's second incident of drug abuse, the Board determined the mitigating factors presented were not nearly sufficient to justify any further equitable relief. Therefore, the Board did not find an upgrade of Petitioner's discharge to Honorable to be warranted in the interests of justice. Based on the same rationale and Petitioner's unsuitability for further military service, the Board also found his assigned reentry code remains appropriate.

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 that, for the period ending 26 July 2005, he was discharged with a "General (Under Honorable Conditions)" characterization of service, under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," and with a separation code of "JFF1."

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

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.

1/28/2026

