



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

[REDACTED]
Docket No. 5725-25
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) USD Memo of 25 Aug 17 (Kurta Memo)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 19 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 punitive discharge be upgraded to "Honorable Conditions (General)," that his separation authority, separation code, and narrative reason for separation be changed to "Secretarial Authority," that his reenlistment code be changed to RE-1, that his rank be restored to E-7/Gunnery Sergeant, and that he be granted retirement from the U.S. Marine Corps in the grade of E-7. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 April 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 (d). Additionally, the Board considered enclosure (2), an advisory opinion (AO) furnished by qualified mental health provider. Although Petitioner was afforded an opportunity to submit a rebuttal, 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 regulations within the Department of the Navy.

b. 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.

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

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 30 November 1978. He served honorably through several periods of enlistment. He was issued a Certificate of Discharge or Release from Active Duty (DD Form 214) for his honorable period of service ending on 9 August 1985.¹

d. Petitioner began his final period of enlistment on 29 June 1994 after being honorably discharged for immediate reenlistment on 28 June 1994.

e. On 13 September 1996, Petitioner was arrested by civil authorities after police responded to a report of theft of a government vehicle. Petitioner was in the vehicle with another male, holding something in his closed hand. He refused to open his hand or show the police officer the contents, opting to rapidly put his hand to his mouth and swallow what he was holding. The arresting officer's report of the incident indicated a belief that Petitioner had swallowed a rock of crack-cocaine that had been hidden in his hand. Petitioner was taken to a hospital but refused medical care. Civil authorities ultimately declined to prosecute charges against Petitioner due to "the credibility of the physical evidence and the inconsistent testimony of the police."

f. On 18 October 1996, Petitioner special duty assignment (SDA) pay as a recruiter was terminated and he was processed for administrative separation for his alleged drug related misconduct. However, on 5 December 1996, he retained by administrative separation board after it unanimously found that the evidence was insufficient to support the proposed basis for separation. At the proceedings, Petitioner made a sworn statement denying involvement with illegal drugs.

g. On 25 January 1997, Petitioner was processed for relief for cause from his duties as a recruiter, citing his involvement in a drug-related incident in a government vehicle. On 4 March 1997, Petitioner submitted a written rebuttal to his relief for cause contesting the validity of the police report, asserting that it had not been considered credible by either the civilian authorities or by the administrative separation board members, and again denied possession or use of drugs or drug-related items.

h. At an unknown date, Petitioner was in treatment for substance use disorder. While in treatment, he had a positive urinalysis for drug use.

i. Petitioner absented himself without authority from 5 August 1997 through 7 August 1997. Upon his return to military control, Petitioner was tried by Special Court Martial (SPCM) on 7 October 1997 and pleaded guilty consistent with the terms of a pre-trial agreement. He was convicted of violations of the Uniform Code of Military Justice (UCMJ) to include: Article 86, for his unauthorized absence; three specifications under Article 112a, for wrongful use of the controlled substance cocaine on 24 June 1997 and 30 Jun 1997, on 8 July 1997 and 14 July 1997, and on 13 September 1997 and 20 September 1997. He was sentenced to 60 days confinement, forfeiture of \$600 per month for six months, and a Bad Conduct discharge (BCD).

¹ After this reenlistment, Petitioner received only one DD Form 214 covering the remainder of his periods of enlistment prior to his punitive discharge.

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

j. On 15 January 1999, Navy Marine Corps Court of Criminal Appeals (NMCCA) affirmed the findings and sentence. The Court of Appeals for the Armed Forces (CAAF) denied further review on 6 July 1999.

k. Petitioner's punitive discharge was executed on 1 October 1999. Upon his discharge, Petitioner was issued a DD Form 214 that did not document Petitioner's period of continuous honorable service from 10 August 1985 through 28 June 1994 in the block 18 remarks.

l. Petitioner contends that clemency factors, as identified reference (e), warrant relief. He also has post-service mental health diagnoses which he believes warrant liberal consideration under references (b) and (c), including post-traumatic stress disorder (PTSD), Major Depressive Disorder (MDD), and Persistent Depressive Disorder (PDD) in addition to alcohol and cocaine use disorders. With respect to his experience of trauma during his military service, he states that, when he was stationed in Japan, a bridge collapsed while tanks were crossing it, resulting in deaths and injuries of his friends. He was among the first responders at the scene and subsequently developed mental health challenges which he kept to himself. His depression became overwhelming following his transfer in 1996, and his cousin suggested he use cocaine to help himself feel better.

m. Petitioner completed a Department of Veterans Affairs (VA) residential rehabilitation program for his PTSD and substance abuse in April 2023 and now participates in ongoing therapy. He asserts that his mental health issues were the root cause of his drug use and resulting discharge and, under liberal consideration, mitigate his misconduct and outweigh his punitive discharge. He points to his record of outstanding, dedicated service as a Marine, to include that he was routinely regarded as one of the top recruiters and as one of the top Marines in his unit. He believes that his situation would have been handled differently in today's Marine Corps whereas his depression was not considered during his SPCM proceedings. In support of his contentions, in addition to his legal counsel's brief, he provided his service awards, recruiting duty records, trial records, photographs and news articles from his time as a recruiter, and his VA residential rehabilitation records.

n. Because Petitioner contends a mental health condition, the Board also requested enclosure (2), the AO, for consideration. 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, other than a possible substance use disorder. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation, other than substance use disorder. Although the Petitioner referenced the mental health state of depression during his trial, it was clarified that this was not a medical diagnosis. Temporally remote to his military service, he has received treatment for PTSD and other mental health concerns from the VA. There is insufficient information regarding these diagnoses to attribute them to military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

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

Conflicting accounts in the service record regarding his purported use of substances raise doubt regarding his candor or the reliability of his recall.

The AO concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, other than a possible stimulant use disorder. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition, other than a possible stimulant use disorder."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as previously discussed, Petitioner's final DD Form 214 fails to annotate his period of continuous Honorable service and requires correction.

Notwithstanding the recommended corrective action below, upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request does not warrant any further relief.

The Board initially concluded Petitioner was appropriately discharged with a BCD based on his SPCM conviction and sentence. The Board noted Petitioner admitted to committing the misconduct that formed the basis of his SPCM conviction. Therefore, the Board determined the presumption of regularity applies to Petitioner's BCD and no error, other than identified above, exists with his record.

However, because Petitioner raised the issue of mental health, 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/she were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition, other than a possible stimulant use disorder, that may be attributed to military service. This conclusion is supported by the AO and the fact Petitioner's mental health treatment was temporally remote to his service. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by a mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and recognized the same concerns raised in the AO. 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 claim that he suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which Petitioner was discharged in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted

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

in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's desire for an upgrade to his characterization of service and the other requested changes to his record, Petitioner's contentions, the totality of Petitioner's service to include service highlights, the non-violent nature of Petitioner's misconduct, the negative effect Petitioner's discharge has had on his life, Petitioner's rehabilitation efforts, Petitioner's mental health issues, the harshness of Petitioner's punishment, the evidence Petitioner provided in support of his application, Petitioner's advanced age, and the passage of time since Petitioner's discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of Petitioner's misconduct far outweighed all of the mitigating factors combined. In particular, the Board found that Petitioner's conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given an opportunity to correct his conduct deficiencies but chose to continue to commit misconduct, which led to Petitioner's BCD. Petitioner's conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. The Board also determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Therefore, even taking into consideration all the mitigation factors in Petitioner's case, the Board found that his misconduct while on active duty outweighed the mitigation evidence offered. While the Board considered Petitioner's pre-misconduct accomplishments and acknowledged the personal difficulties Petitioner has endured, ultimately, the Board concluded an upgrade of Petitioner's discharge characterization of service is not warranted in the interests of justice. Based on the same rationale, the Board also determined Petitioner's additional requests for relief were also not warranted in the interest of justice.

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

RECOMMENDATION:

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending on 1 October 1999, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 10AUG1985 TO 28JUN1994."

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.

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

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.

5/22/2026

[REDACTED]