



Docket No. 7372-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)
(c) USECDEF Memo of 25 Aug 17 (Kurta Memo)
(d) SECDEF Memo of 13 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion of 15 Dec 25

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) requesting his characterization of service be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214). Petitioner also asked for his rank to be restored to E-5 and to receive awards and decorations he earned in service. Enclosures (2) and (3) also apply.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 30 March 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered enclosure (4), the advisory opinion (AO) furnished by qualified mental health provider, that was considered favorable to Petitioner.

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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

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[REDACTED]

c. Petitioner enlisted in the Marine Corps Reserve and commenced Initial Active Duty for Training (IADT) from 28 August 1996 to 21 March 1996. Petitioner continued his affiliation with the Marine Corps Reserves and re-enlisted on 20 October 2003.

d. On 4 January 2004, Petitioner was involuntarily transferred to active duty and commenced temporary additional duty (TAD) in support of Operation Iraqi Freedom in Al Asad, Iraq from 13 February 2004 to 23 August 2004.

e. On 5 January 2005, Petitioner's urine sample was reported as testing positive for cocaine.

f. On 10 March 2005, Petitioner received a substance abuse evaluation and was determined to be a cocaine abuser.

g. On 21 March 2005, Petitioner entered into a pre-trial agreement (PTA) and agreed to plead guilty at Summary Court Martial (SCM), and waive his Administrative Discharge Board (ADB), in exchange for withdrawal of charges referred to Special Court Martial (SPCM). However, the next day Petitioner rescinded the aspect of the PTA pertaining to his ADB waiver.

h. On 7 April 2005, Petitioner completed substance abuse treatment.

i. On 19 April 2005, pursuant to his PTA, Petitioner pleaded guilty at SCM of wrongful use of cocaine. He was sentenced to reduction-in-rank to E-4 and forfeitures of pay.

j. On 23 May 2005, Petitioner was notified of administrative separation processing by reason of misconduct due to drug abuse. He consulted with counsel and requested an ADB.

k. While awaiting his ADB, Petitioner was released from active duty and transferred to the selected reserves on 9 August 2005.

l. On 27 March 2006, the ADB hearing was convened and found Petitioner had committed misconduct and recommended he be discharged Under Other Than Honorable Conditions (OTH) conditions by reason of misconduct due to drug abuse. The separation authority approved the ADB findings and recommendations and Petitioner was so discharged on 30 June 2006.

m. Petitioner contends his misconduct is mitigated by PTSD he incurred in combat and that his restoration of rank and upgrade to his characterization of service is warranted based on his service-connected PTSD and the Department of Veterans Affairs (VA) discharge review that found he is eligible for benefits. Petitioner submitted a VA eligibility determination letter in support of his application.

n. As part of the Board's review, the Board considered enclosure (4). The AO states in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

During military service, the Petitioner was diagnosed with a substance use disorder.

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[REDACTED]

Temporally remote to his military service, the VA has granted service connection for PTSD. In service, the Petitioner attributed his misconduct to family and personal stressors. It is possible that stress of return from a combat deployment may have exacerbated personal stressors. It is possible to consider his substance use as a behavioral indicator of avoidance consistent with PTSD.

The AO concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the Petitioner that his misconduct may be attributed to PTSD."

CONCLUSION:

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

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. The Board also noted Petitioner did not deny committing the misconduct that formed the basis of his administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to Petitioner's administrative separation and no error 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 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-service medical evidence Petitioner provided. Additionally, after applying liberal consideration, the Board found sufficient 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 again relied upon the AO's conclusions. Therefore, after carefully considering all the evidence, the Board felt that Petitioner's characterization of service should be upgraded to General (Under Honorable Conditions), his reason for separation be changed to reflect a Secretarial Authority discharge, and his reentry code be changed to RE-3C.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge or reinstate Petitioner's rank to E-5. 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 he 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 in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's desire for reinstatement to paygrade E-5, his contentions, the totality of his service to include service highlights, the non-violent nature of his misconduct, his relative youth and immaturity at the time of his misconduct, his mental health issues, the evidence he provided in support of his application, and the passage of time since his discharge.

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[REDACTED]

The Board found that the mitigating factors were not nearly sufficient to justify any further 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 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. The Board also determined its recommended relief already provides Petitioner significant clemency not normally granted in drug offense cases. 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 to support any further relief. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner be issued a Page 11 administrative counseling indicating, for the period ending 30 June 2006, that he was separated with a "General (Under Honorable Conditions)" characterization of service, separation authority of "MARCORSEPMAN 6214," separation code of "JFF1," narrative reason for separation of "Secretarial Authority," and reenlistment code of "RE-3C."

That Headquarters Marine Corps (HQMC) review Petitioner's record and issue awards or decorations to which Petitioner is entitled but did not receive. That such awards and decorations be annotated in Petitioner's record, as required.

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

That 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.

4/16/2026
[REDACTED]