



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

██████████
Docket No. 8095-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

Ref: (a) Title 10 U.S.C. §1552
(b) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 18 Dec 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 for an upgrade of his characterization of service to Honorable.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 4 February 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) and (c). Additionally, the Board considered enclosure (3), an Advisory Opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on the AO, 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 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 the interests of justice.

c. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 4 April 1990. Petitioner was granted a waiver upon entry to active duty for the possession of marijuana while in the Delayed Entry Program (DEP).

d. Petitioner participated in Operation Desert Shield/Desert Storm from December 1990 to April 1991 and October 1991 to February 1992.

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

e. On 6 January 1993, Petitioner tested positive for marijuana and later received non-judicial punishment (NJP), on 6 January 1993, for wrongful use marijuana. On 20 April 1993, Petitioner was evaluated and found alcohol dependent and drug abuser.

f. Consequently, Petitioner was notified of administrative separation processing for misconduct drug abuse. Petitioner elected his right to consult with counsel but waived his right to an administrative board.

g. The Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that Petitioner be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and Petitioner was so discharged on 16 July 1993.

h. Petitioner requests an upgrade to Honorable based on his performance in both Operation Desert Shield and Storm. He also raised arguments regarding his post-service public service in the State of [REDACTED]. For purposes of clemency and equity consideration, the Board noted Petitioner provided two advocacy letters, and certificates of accomplishments.

i. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3). The AO stated in pertinent part:

Petitioner was diagnosed with a substance use disorder during military service. There is no evidence that he was diagnosed with another mental health condition in military service. He has provided no medical evidence of another mental health condition. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given pre-service marijuana activity and his in-service denials of marijuana use. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition, other than a possible substance use disorder."

CONCLUSION:

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

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. While the Board carefully considered Petitioner's contention for mitigation, the Board noted he did not deny committing the misconduct. Therefore, the Board determined the presumption of regularity applies to the finding that Petitioner committed the misconduct that formed the basis of his administrative separation and no error exists with Petitioner's OTH characterization of service.

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

However, because Petitioner based his claim for relief in whole or in part upon his mental health condition, the Board reviewed his application in accordance with the guidance of reference (b).

Accordingly, the Board applied liberal consideration to Petitioner's claimed MHC, and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO that there is insufficient evidence that his misconduct may be attributed to a mental health condition, other than a possible substance use disorder. 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 his 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.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its potential effect upon his conduct in accordance with the Kurta Memo, 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, Petitioner's contentions, the totality of Petitioner's service, the non-violent nature of Petitioner's misconduct, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, Petitioner's rehabilitation efforts, Petitioner's post-service record of accomplishments, Petitioner's service to his community, Petitioner claimed mental health issues, the character references Petitioner provided for review, and the passage of time since Petitioner's discharge.

While the Board does not condone Petitioner's misconduct, it concluded clemency is appropriate in his case. In making their finding, the Board took into consideration Petitioner's two deployments in support of Operation Desert Shield and Desert Storm, his receipt of the combat action ribbon, and advocacy letters describing his contributions to his community as a law enforcement officer. Therefore, after thorough review and weighing the nature of Petitioner's misconduct against the mitigating factors in his case, the Board determined, purely as a matter of clemency and equity, the interests of justice are served by upgrading 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. While the Board noted that flawless service is not required to receive an Honorable characterization of service, the nature and gravity of Petitioner's misconduct led them to conclude that his service was not Honorable. 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. Petitioner's drug abuse was also aggravated by his status as a non-commissioned officer at the time.

Finally, based on the same rationale, the Board concluded that Petitioner's reason for separation, separation authority, separation code, and reentry code remain appropriate in light of Petitioner's record of misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) indicating that, for the period ending 16 July 1993, his 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.

2/22/2026

