



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 7189-20
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER █ USN,
XXX-XX █

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 “Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD”
(c) PDUSD Memo of 24 Feb 16 “Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI”
(d) PDUSD Memo of 25 Aug 17 “Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault or Sexual Harassment”

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion dated 14 April 2021

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy filed enclosure (1) with this Board requesting that his other than honorable (OTH) characterization of service be changed in light of current guidelines as reflected in references (b) and (d). Enclosures (1) through (4) apply.

2. The Board reviewed Petitioner’s allegations of error and injustice on 21 July 2021 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 the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, The Board also considered the advisory opinion (AO) dated 14 April 2021, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not do so.

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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 waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 5 February 1987. During the period from 6 to 25 May 1988, Petitioner received three non-judicial punishments (NJP) for unauthorized absence (UA), disrespect toward a superior commissioned officer, disobeying non-commissioned officer, and three specifications of failure to go to appointed place of duty. On 10 January 1990, Petitioner received NJP for assault with a dangerous weapon, disorderly conduct, wrongfully possessing an altered ID card, and wrongfully possessing more than one ID card. Subsequently, Petitioner was notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After waiving his rights, his commanding officer (CO) forwarded Petitioner's package to the separation authority (SA) recommending his discharge by reason of misconduct due to commission of a serious offense, with and other than honorable (OTH) characterization of service. The SA approved the recommendation, and on 22 March 1990, he was so discharged.

d. Petitioner contends that prior to his discharge, Petitioner experienced PTSD as a result from the death of his younger brother and not being able to deal with his death. Petitioner also notes that since his discharge, he has matured and became a better person.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (4), the Board concludes that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in references (b) and (c). Specifically, the Board considered whether his application was the type that was intended to be covered by this policy.

In this regard, based upon his record of service and the AO dated 14 April 2021. Relief in the form of his characterization of service should be changed to general under honorable conditions. The Board noted Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in the AO. The Board was able to reasonably conclude that the PTSD condition existed at the time of his misconduct, and subsequently resulted in his OTH discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. The Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been other than honorable, and re-characterization to a general discharge is now more appropriate. However, the Board determined that Petitioner's narrative reasoning for separation and reenlistment code will remain unchanged. In view of the foregoing,

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the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record is corrected to show that he was issued a general discharge on 22 March 1990, vice the OTH discharge actually issued on that day.

That Petitioner is issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

That no further changes be made to the 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.

Sincerely,

7/28/2021

[REDACTED]

Executive Director

Signed by [REDACTED]