



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

█
Docket No: 57-21
Ref: Signature Date

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

Subj: REVIEW OF 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"
(e) USD memo of 25 Jul 18, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations"

Encl: (1) DD Form 149 (NR20210000057)
(2) BCNR, Advisory Opinion of 14 May 21

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting an upgrade to his discharge characterization. Enclosure (2) and references (a) through (e) apply.

2. The Board consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 9 July 2021, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta 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) furnished by qualified mental health provider.

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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 and began a period of active duty on 17 August 1999.

d. Petitioner had a period of unauthorized absence from 7 to 10 January 2001.

e. On 28 February 2001, Petitioner was screened for drug dependence by [REDACTED] [REDACTED] Medical Officer and was determined to meet the minimum criteria for Drug Dependence. Petitioner self-referred for treatment in December 2000.

f. On 20 March 2001, Petitioner was notified of administrative separation proceedings against him on the basis of drug abuse.

g. On 20 March 2001, Petitioner waived his right to appear before an administrative separation board.

h. On 18 May 2001, Petitioner successfully completed Substance Abuse Rehabilitation Treatment in [REDACTED]

i. On 18 June 2001, Commanding Officer, [REDACTED] recommended Petitioner be administratively separated with a general characterization of service immediately following his completion of outpatient treatment for drug abuse.

j. On 22 June 2001, Petitioner was discharged from the Navy on the basis of Misconduct Due to Drug Abuse, and received a general characterization of service and a reentry (RE) code of RE-4.

k. In Petitioner's application for correction, he requests an upgrade to his general discharge to an honorable characterization of service. Petitioner provides states that the discharge is both procedurally and equitably defective and cites mental health issues.

l. As part of the review process, a qualified mental health provider reviewed Petitioner's request and noted that Petitioner's in-service records did contain evidence of self-referral for substance abuse treatment and a diagnosis of depression on 16 February 2001. The Advisory Opinion concluded that there is sufficient evidence that Petitioner exhibited behaviors associated with a mental health condition during his military service and that his misconduct may be mitigated by his mental health condition.

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CONCLUSION

The Board reviewed Petitioner's submissions as well as his available service record, and considered the analysis and findings of the Advisory Opinion. The Board substantially concurred with the conclusion of the Advisory Opinion that the available evidence support a finding that Petitioner suffered from a mental health condition while serving in the Navy that mitigated his misconduct of wrongful use of a controlled substance. The Board noted that Petitioner self-referred for substance abuse treatment, and determined that given Petitioner's efforts to seek support for drug dependence, his narrative reason for separation should be changed to remove reference to Misconduct due to Drug Abuse. The Board found that applying liberal consideration and in consideration of the self-referral to for treatment, Petitioner is entitled to an upgrade to an honorable characterization of service and a change to his narrative reason for separation to "Secretarial Authority" with corresponding changes to his separation code (SPD) and his separation authority.

The Board concluded that no further corrective action is warranted.

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

RECOMMENDATION:

That Petitioner's naval record be corrected to show that on 22 June 2001, Petitioner was issued an honorable characterization of service. That Petitioner's narrative reason for separation be changed to "Secretarial Authority," that his SPD code is "JFF," and his separation authority is "MILPERSMAN 1910-164."

That Petitioner be issued a new DD Form 214.

That Petitioner be issued an honorable discharge certificate.

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.

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8/5/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]