



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

█
Docket No: 1477-21
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, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD," of 3 September 2014
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (TBI)," of 24 February 2016
(d) USD memo, "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," of 25 August 2017
(e) USD memo of 25 Jul 2018 "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018
(f) Advisory Opinion of 15 July 2021

Encl: (1) DD Form 149 w/attachments
(2) Case summary

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 naval record be corrected by upgrading his discharge characterization to general (under honorable conditions). As described below, the Board recommended granting the relief requested.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 23 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, and references (b) through (e), which include the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo), the 3 September 2014 guidance from the Secretary of Defense

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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 reference (f) 15 July 2021 advisory opinion (AO) furnished by qualified mental health provider, which is set forth in the brief sheet in this matter.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The Petitioner enlisted in the Navy and commenced a period of active duty on 11 February 1991. On 5 November 1993, he received nonjudicial punishment for drunk and disorderly conduct, and he received a written warning concerning his misconduct. On 15 April 1994, he received nonjudicial punishment for larceny for an item worth \$55 and failing to go to his appointed place of duty. On the same date, Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith, and he waived his right to an administrative board. Petitioner's commanding officer recommended that he be discharged, noting that "[d]ue to [Petitioner's] excellent work in his shop, I further recommend that he be given a GENERAL discharge." (Emphasis in original.) On 12 May 1994, the discharge authority directed that Petitioner be discharged with an other than honorable characterization of service, and on 24 May 1994, he was so discharged.

c. In 1994, the Petitioner filed an application with the Naval Discharge Review Board (NDRB). In his application, he explained that he did not believe he would receive an other than honorable (OTH) discharge or else he would not have waived his administrative board. On 18 October 1995, the NDRB denied his request. In 2004, the Petitioner filed another application with the NDRB. In his application, he provided a lengthy personal statement, including recounting that his close colleague died during training operations in a plane crash and he went to the crash site, he also explained things that were going on in his life at the time and he also explained his positive post-discharge activities. On 6 April 2005, the NDRB denied his application, noting as follows: "[w]hile the Board applauds the Applicant's record of achievement in terms of education and employment, the Applicant did not provide any documentation of community service, evidence of alcohol rehabilitation, and certification of non-involvement with civil authorities for the Board to consider... [a]t this time, the Applicant has not provided sufficient documentation of post service character and conduct to mitigate the misconduct that resulted in his characterization of discharge... [t]herefore, no relief will be granted."

d. In his petition before this Board, the Petitioner contends that, at the time of his service and misconduct, he was suffering from undiagnosed PTSD due to multiple traumatic events witnessed in service. In personal statements, post-discharge psychological evaluations, and counselor's treatment correspondence, he described witnessing several aircraft accidents in which aircrew he knew and worked with were killed. From a post-service clemency perspective,

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the Petitioner submitted a personal statement explaining his community involvement as well as several character letters.

d. In connection with his assertions of a mental health condition, the Board requested, and received, the reference (f) AO. The AO was considered favorable to Petitioner, and concluded, “[i]t is my considered medical opinion the preponderance of indirect evidence supported Petitioner’s contention of undiagnosed PTSD as a result of his military service, and his inservice misconduct could be mitigated by his experience of PTSD.”

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) through (f), the Board determined that, with respect to the specific relief that Petitioner requested, there exists an error or injustice warranting relief in the form of clemency. The Board did not disagree with the finding of the AO and it used the finding of the AO to provide context and illumination to the application of the Wilkie Memo clemency factors. Thus, the Board found persuasive the Petitioner’s personal statement as well as the letters of support that he provided. The Board also considered the overall circumstances and nature of the Petitioner’s misconduct including his commanding officer’s recommendation in counterbalance to his positive post-service activities. Accordingly, the Board voted unanimously to upgrade his discharge characterization to general (under honorable conditions).

Based on a careful review of all of the facts presented, the Board concludes that Petitioner is entitled to relief as follows.

RECOMMENDATION

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

Petitioner be issued a new DD Form 214 indicating that his discharge at separation was general (under honorable conditions); that Petitioner be issued a general discharge certificate; and

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

A copy of this report of proceedings shall 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 Regulations Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/5/2021

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Executive Director

Signed by: [REDACTED]