



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

[REDACTED]
Docket No: 1740-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX-[REDACTED]

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 Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or 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 (Kurta Memo)
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (Wilkie Memo)

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

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], 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, 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 an advisory opinion (AO) furnished by a 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 interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Navy and began a period of active service on 26 November 1996. Petitioner's pre-enlistment physical on 16 February 1996 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. The medical history did note Petitioner seeing a psychiatrist on and off from ages 8 to 15 due to declining school performance. The medical history noted that Petitioner did not see a psychiatrist after age 15. The Petitioner expressly denied ever attempting suicide on his medical history. Additionally, on 23 November 1996 the Petitioner on his security clearance questionnaire expressly denied consulting with a mental health professional, psychologist, counselor, etc.) in the last 7 years, or consulting with another health care provider about a mental health related condition.

d. On 18 July 1997 Petitioner commenced a period of unauthorized absence (UA). On 19 August 1997 Petitioner's command declared Petitioner a deserter. Petitioner's UA terminated on 29 November 1999 after 864 days with his arrest by civilian authorities in [REDACTED] and return to military control.

e. Petitioner subsequently submitted a voluntary written request for an administrative discharge under other than honorable conditions in lieu of trial by court-martial for his long-term UA. As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 11 January 2000 Petitioner was discharged from the Navy with an other than honorable (OTH) characterization of service for a pattern of misconduct and assigned an RE-4 reentry code.

f. In short, Petitioner contended that he was suffering from PTSD and other mental health conditions stemming from his sexual abuse as a child and that were further exacerbated by the rigors of his training and service in the Navy. Petitioner further argued that his mental health symptoms were a causative factor for the avoidance behavior underlying his separation and OTH discharge.

g. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 24 May 2021. The Ph.D. initially observed that Petitioner provided documentation of several post-service diagnoses ranging from substance use issues (cannabis dependence, hallucinogen abuse, and methamphetamine dependence), to mental health conditions (depression, not otherwise specified (NOS), bipolar disorder NOS, PTSD (due to childhood

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sexual abuse), and psychotic disorder NOS), to personality disorders (personality disorder NOS, antisocial personality disorder, personality disorder with antisocial, histrionic, narcissistic, and borderline traits). The Ph.D. also noted that Petitioner reported he was hospitalized on active duty from 27 May until 2 June 1997 and diagnosed with a personality disorder with antisocial traits. The Ph.D. concluded by opining there was evidence Petitioner may have exhibited avoidance behaviors associated with a mental health condition on active duty and his misconduct may be mitigated by his mental health condition.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos. Specifically, the Board considered whether his application was the type that was intended to be covered by these policies.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's diagnosed mental health conditions mitigated the misconduct used to characterize his discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge request and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board Majority concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "general (under honorable conditions)" (GEN) is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge, and the Board determined that Sailors should receive no higher discharge characterization than is due. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. On the contrary, the Board determined the record clearly reflected that Petitioner's long-term UA was intentional and demonstrated he was unfit for further service. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge to Honorable solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities.

Additionally, the Board determined that Petitioner had a legal, moral and ethical obligation to remain truthful on his enlistment paperwork. Had Petitioner properly and fully disclosed his pre-service suicide attempt by overdose and corresponding mental health history, he would have likely been disqualified from enlisting. Lastly, in light of the Wilkie Memo, the Board still

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similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a GEN characterization of service and no higher.

The Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that they were all proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "General (Under Honorable Conditions)."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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 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.

7/26/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]