



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

█  
Docket No: 3636-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USN,  
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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), 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 to upgrade his characterization of service, to make other conforming changes to his DD Form 214, and to add a missing medal.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 8 October 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

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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.

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 22 July 1998. Petitioner's pre-enlistment physical on 29 October 1997 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 22 December 1998 Petitioner reported for duty on board the [REDACTED] in [REDACTED].

d. On 26 October 2000 Petitioner received non-judicial punishment (NJP) for the wrongful use of a controlled substance. The NJP-related documents indicated that Petitioner tested positive for marijuana following a drunken evening out with no less than two other shipmates where each Sailor's blood alcohol levels were well above the legal driving limit. Each Sailor voluntarily provided a urine sample following their return to military custody and Petitioner's urine sample tested positive for THC. Petitioner did not appeal his NJP.

e. Following the NJP, Petitioner was immediately notified of administrative separation (Adsep) proceedings by reason of misconduct due to drug abuse. On 26 October 2000 Petitioner waived his rights to consult with counsel, submit a rebuttal statement, and to request an Adsep hearing. In the interim, Petitioner was screened for drug dependency and determined not to be drug dependent. Petitioner was recommended for Level I outpatient alcohol rehabilitation treatment, but Petitioner declined such treatment. Ultimately, on 5 January 2001 the Petitioner was discharged from the Navy for misconduct due to drug abuse with an other than honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

f. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 3.0. Navy regulations in place at the time of his discharge required a minimum trait average of only 2.0 in conduct (proper military behavior), for a fully honorable characterization of service.

g. In short, Petitioner contended that he was suffering from service-connected PTSD and traumatic brain injuries (TBI) and exhibited PTSD/TBI symptoms prior to and leading up to his discharge. The Petitioner argued that such mental health conditions affected his capability to serve satisfactorily, and that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service.

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h. As part of the review process, the BCNR Physician Advisor, who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed Petitioner's contentions and the available records, and issued an AO on 28 September 2021. The MD initially observed Petitioner was diagnosed with PTSD and traumatic brain injury (TBI) post-service, and that Petitioner was involved in an automobile accident with head injuries in December 1998 while on active duty, and also suffered a second head injury when he fell off of his bunk at sea. However, the MD noted that the remainder of Petitioner's in-service records did not contain any diagnosed mental health conditions or additional symptoms/behaviors indicative of a mental health condition. The MD concluded by opining that there was sufficient indirect evidence to support Petitioner's contention he suffered from an unfitting mental health condition (e.g., PTSD due to TBI) on active duty, and that his in-service misconduct may be mitigated by his PTSD/TBI experiences.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record 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, and although the Board does not condone the wrongful use of controlled substances, the Board noted that the Petitioner was likely suffering from PTSD and related symptoms due to TBI he suffered during his enlistment. The Board also determined that the Petitioner's abusive childhood and being the victim of multiple sexual assaults as an adolescent likely caused certain behavioral issues and/or mental health symptoms that carried over onto active duty. The Board also observed Petitioner's overall active duty trait average in conduct during his enlistment exceeded the Navy's required minimum trait average in that category for a general or honorable characterization of service. Accordingly, while not necessarily excusing or endorsing the Petitioner's drug-related misconduct, the Board 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) strictly on clemency grounds is appropriate at this time.

However, the Board concluded despite the Petitioner having to overcome some significant personal challenges, that there was absolutely no nexus between Petitioner's mental health conditions and/or related symptoms and his drug use, and contrary to the AO the Board determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the drug use that formed the primary basis of Petitioner's discharge. Even under the liberal consideration standard, the Board concluded that Petitioner's drug use was not due to mental health-related conditions or symptoms. The Board noted that Petitioner's drug use as charged occurred during an evening out with two other shipmates, and that all three of

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them were intoxicated well above legal driving limits. The Board determined that Petitioner's drug use on this particular evening was knowing and willful, and concluded that any suggestion Petitioner's drug use was an effort to self-medicate due to suffering from certain mental health issues was entirely without merit.

Notwithstanding the recommended corrective action below, the Board was not willing to grant a full upgrade to an honorable discharge. The Board, despite his trait average in conduct, did not believe that the Petitioner's record was otherwise so meritorious to deserve an honorable discharge. 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. 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. Lastly, in light of the Wilkie Memo, the Board still 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 also 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 his willful drug abuse, and that collectively they were all proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

Lastly, the Board concluded that Petitioner provided sufficient evidence to indicate that he was awarded and entitled to the Humanitarian Service Medal as of 25 March 1999 for participating in disaster relief operations following Hurricane Georges in 1998.

#### 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)."

That Petitioner's DD Form 214 indicate the entitlement to the following additional decorations, medals, badges, commendations, citations, and/or campaign ribbons awarded or authorized:

- 1) Humanitarian Service Medal.

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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.

10/21/2021

