



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

[REDACTED]  
Docket No: 4136-21

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,  
[REDACTED]

Ref: (a) 10 U.S.C. §1552  
(b) 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  
(c) USD 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

Encl: (1) DD Form 149 w/attachments  
(2) Case summary  
(3) Advisory opinion of 12 October 2021

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 an unspecified level.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 December 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) and (c), namely, 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), 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 considered the enclosure (3) 12 October 2021 advisory opinion (AO) furnished by a qualified mental health provider.

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:

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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 12 January 1984. On 7 September 1984, the Petitioner received nonjudicial punishment for being absent from his appointed place of duty and for being disrespectful to a petty officer. On 27 September 1984, the Petitioner received nonjudicial punishment for willful disobedience of a commissioned officer, disobeying the order of a senior chief petty officer, failing to go to his appointed place of duty, and for missing restricted muster on 5 occasions. On 12 October 1984, the Petitioner received nonjudicial punishment for making disrespectful gestures toward a master chief petty officer and a commissioned officer, and for missing restricted muster on 11 occasions. On 23 October 1984, the Petitioner was notified of the initiation of administrative separation processing and his rights in connection therewith. He exercised his right to an administrative board but waived his right to do so with representation by an attorney. On 5 November 1984, the Petitioner's administrative board was held, during which he was not represented by an attorney. The Board found that the Petitioner committed misconduct based on a pattern of misconduct, that he should be discharged, and that his characterization of service should be other than honorable. After the administrative board, the Petitioner sought legal counsel, who wrote a letter of deficiency asserting that the Petitioner did not knowingly waive his right to counsel. On 20 November 1984, the Petitioner's commanding officer transmitted his recommendation that the Petitioner be discharged with an other than honorable characterization of service. In his transmittal letter, the commanding officer described the efforts of the command in providing the Petitioner his rights to counsel in connection with this discharge processing. On 5 December 1984, the discharge authority directed that the Petitioner be discharged with an other than honorable characterization of service, and 2 January 1985, the Petitioner was so discharged.

c. In 1989, the Petitioner filed an application with the Naval Discharge Review Board (NDRB), contending that he did not have an attorney prior to his administrative board, that his discharge was too harsh based on the offenses, and that his punishments while in the Navy were unjust. On 27 October 1989, the NDRB denied the Petitioner's application.

d. The Petitioner's brother submitted a letter on the Petitioner's behalf, in which he described the Petitioner's mental health conditions, including describing the Petitioner's mental health conditions while he was a child, through his enlistment in the Navy, and after his naval service. He further explained how the Petitioner has been in mental institutions regularly since the time of his discharge from the Navy, and he provided several supporting medical records, including materials relating to the Petitioner's hospitalizations.

e. In light of the Petitioner's assertion of a mental health condition, the Board requested the enclosure (3) AO. The AO is considered unfavorable to Petitioner, and found that the Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. The AO noted that the Petitioner's post-service records state that he has been diagnosed with a personality disorder and that such disorders not typically amenable to treatment within the Navy, and are not considered an unfitting service condition. According to the AO, it is typical for a personality disorder to improve after separation from service, and here, post-

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service records indicate that the Petitioner was able to function reasonably well, maintaining employment for at least for four or five years post-service. Thus, the AO concluded, “there is insufficient evidence of a diagnosis of an unfitting mental health condition that can be attributed to military service, or that his misconduct could be attributed to an unfitting mental health condition.”

## CONCLUSION

Upon review and consideration of all the evidence of record, and in view of references (b) and (c), the Board determined that the Petitioner is entitled to relief in the form of upgrading his discharge characterization to general (under honorable conditions). In reaching its decision, the Board acknowledged the finding of the AO, but found that the written statement of the Petitioner’s brother was particularly compelling and descriptive. In addition, the Board found that the post-service medical records submitted by the Petitioner provided insight into the Petitioner’s mental health condition. After careful review of these materials, the Board determined that it is reasonable to believe that the Petitioner’s misconduct that led to his other than honorable characterization of service may have been impacted to some extent by his mental health condition. In reaching its conclusion, the Board determined that not all of the misconduct that the Petitioner engaged in while on active duty was mitigated by his mental health condition, thus precluding an honorable characterization of service. Accordingly, in balancing the Petitioner’s contentions with the misconduct that the Petitioner engaged in while on active duty, the Board determined that an upgrade to a general (under honorable conditions) characterization was appropriate.

## RECOMMENDATION

In view of the above, the Board directs the following corrective action: Petitioner be issued a new DD Form 214 reflecting that his characterization of service at the time of his discharge was general (under honorable conditions).

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.

1/13/2022

[REDACTED]  
Executive Director  
[REDACTED]