



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

██████████
Docket No: 4503-21
1035-19
5332-99
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
USN, XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with enclosures
(2) Advisory Opinion of 20 Dec 21

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 reflect an upgraded characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 18 March 2022 and pursuant to its regulations determined 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 considered the advisory opinion (AO) furnished by a qualified mental health provider and documents submitted in rebuttal.

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. Although Petitioner did

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not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted and entered a period of active duty in the Navy on 12 January 1965.

c. On 4 October 1965, Petitioner was convicted by summary court martial of leaving his appointed place of duty without authority, the forward emergency diesel fire pump, in violation of Article 86, Uniform Code of Military Justice (UCMJ).

d. On 15 January 1966, Petitioner received nonjudicial punishment (NJP) for failure to go to his place of duty at the appointed time in violation of Article 86, UCMJ.

e. Petitioner received a second NJP, on 26 January 1966, for failure to go to his appointed place of duty in violation of Article 86, UCMJ. He was sentenced to confinement on bread and water for three days.

f. An administrative remark in Petitioner's service record, dated 27 May 1966, indicates he is entitled to wear the Vietnam Service Medal.

g. On 17 August 1966, Petitioner received his third NJP for a one day unauthorized absence (UA) and failure to obey a general order or regulation in violation of Articles 86 and 92, UCMJ.

h. Petitioner entered a period of UA from 24 August 1966 to 21 September 1966, terminated by surrender. On 12 October 1966 he was released from the county jail, transferred to the U.S. Naval Station, and confined in the brig.

i. On 19 October 1966, Petitioner received his fourth NJP for the 28 day UA.

j. Petitioner entered another period of UA from 26 October 1966 to 7 February 1967.

k. On 2 March 1967, Petitioner was convicted by special court martial for the 104 day UA. He was sentenced to confinement at hard labor for three months and forfeiture of \$59 per month for three months.

l. On 31 March 1967, the separation authority directed that Petitioner be separated with an undesirable discharge by reason of unfitness.

m. On 14 April 1967, Petitioner was discharged with an other than honorable (OTH) characterization of service.

n. On 12 September 2018, the Department of Veterans Affairs (VA) determined Petitioner's service was honorable for VA purposes and that he and his dependents are eligible for VA benefits.

o. Petitioner contends that the UAs leading to his OTH were mitigated by race-based harassment received by naval superiors and colleagues. In Petitioner's previous application he

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contends a group of Sailors on the ship were outwardly hostile to black Sailors and threatened to beat him up in the night. He states he witnessed another black Sailor being beaten near the laundry area and was often kicked when passing certain officers. He states he was regularly called disturbing racial epithets or told he did not deserve to be there. He reported the treatment, requested a transfer, and the complaints made the targeting worse. He states he could no longer endure the inhumane treatment, feared for his safety, and went UA to his home. Petitioner contends his counsel, who was white, did not care what happened to him and pressured him to take a plea deal. He contends he and other black Sailors were treated with less credibility and respect. He states the noncommissioned officers running the brig routinely called him racial slurs, beat him up, and sent him to solitary confinement. He further states he was undernourished and the brig was a volatile place. Petitioner's legal brief rebuts the previous Board finding that Petitioner's most significant UA was not related to race-based harassment because it occurred after he had been transferred from the ship.

p. In support of this application, Petitioner provided a character reference on his behalf, civilian psychiatric evaluation, documentation indicating he is attending college, is an active volunteer with his college food bank, was nominated for student employee of the year as a market assistant, and has sought mental health treatment.

q. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 20 December 2021. The AO noted that throughout Petitioner's military service, disciplinary actions and administrative processing, there were no indications of a mental health condition requiring referral to mental health resources. Petitioner has presented post-discharge clinical records and a mental health evaluation from a mental health provider supporting his contention of PTSD from emotional and physical abuse due to racial discrimination and harassment during his military service. The AO concluded that there was post-discharge evidence that the Petitioner may have incurred a mental health condition during his military service; however, there was insufficient evidence that his misconduct could be mitigated by an unfitting mental health condition.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants full relief and that his characterization of service should reflect Honorable.

The Board applied liberal consideration in accordance with the references; however concurred with the AO and found there was insufficient evidence to establish that Petitioner's misconduct could be mitigated by an unfitting mental health condition. The Board found no error or injustice in Petitioner's characterization of service at the time of discharge and determined it was warranted by Petitioner's record of misconduct.

Despite finding no error or injustice in Petitioner's discharge, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice today in accordance with reference (e). In this regard, the Board considered, among other factors,

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Petitioner's commendable post-service academic pursuits and his volunteerism; that Petitioner sought out rehabilitation treatment to manage his mental health condition; the non-violent nature of his misconduct; and the passage of time since Petitioner's discharge. Accordingly, the Board determined that as a grant of clemency, Petitioner's post-service record warrants relief in the form of an upgrade to his characterization of service to Honorable. Furthermore, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason, separation code, and separation authority should be changed to "Secretarial Authority" and that his reentry code should reflect RE-1.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 indicating the characterization of service as "Honorable," narrative reason for separation as "Secretarial Authority," separation authority as "MILPERSMAN 1910-164," separation code as "JFF," and reentry code as "RE-1."

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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Signed by: [REDACTED]