



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

[REDACTED]
Docket No: 4535-21
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), 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 and to make other conforming changes to his DD Form 214 following his discharge for an adjustment disorder.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 November 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 the advisory

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opinion (AO) furnished by qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal, and you did do so.

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, the Board determined that it was in the interests of justice to review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active service on 7 August 2002. Petitioner's pre-enlistment physical on 21 May 2002 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 3 September 2002 Petitioner was admitted to the Mental Health Department at Naval Hospital [REDACTED] following an overdose of Motrin. Petitioner was diagnosed with an adjustment disorder with depressed mood and antisocial traits, and was deemed a risk of harm to self and others if continued on active duty. A Navy Medical Officer staff determined Petitioner possessed an adjustment disorder of such severity as to preclude further active duty service and recommended he be processed for an entry level separation (ELS).

e. On 6 September 2002 Petitioner's command initiated administrative separation proceedings by reason of convenience of the government due to physical or mental conditions as evidenced by Petitioner's diagnosed adjustment disorder. Petitioner waived his rights to consult with counsel, submit statements on his own behalf, and for General Court-Martial Convening Authority review of his discharge. Ultimately, on 16 September 2002 Petitioner was discharged from the Navy with an uncharacterized ELS and assigned an RE-4 reentry code. The Board specifically noted on his DD Form 214 that the narrative reason for separation was "Condition, Not a Disability."

f. In short, Petitioner contended that at the time of his ELS, he was so confused and depressed that he was not able to make any rational decisions or judgments based on his medical diagnoses. Petitioner also contended he is currently being treated for the same/similar medical condition he experienced on active duty. Petitioner argued that his discharge should be upgraded because he's being treated for the same medical condition, and that this would allow him to become eligible to apply for VA benefits. Petitioner also stated his medical condition restricts him from obtaining gainful employment.

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 16 September 2021. The Ph.D. initially observed that Petitioner's in-service records did not contain evidence of additional mental health diagnoses or psychological/behavioral changes indicating additional mental health conditions. The Ph.D. noted that Petitioner's active duty adjustment disorder diagnosis due to unsuitability for military service and poor adjustment to the demands of the military environment appeared appropriate and well-documented. The Ph.D.

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noted that although Petitioner submitted a post-discharge clinical note from a gastroenterology consultation, there was no entry regarding mental health symptoms or conditions, nor any reference to his military service. The Ph.D. also noted that Petitioner's 2021 diagnoses of PTSD with dissociative, major depressive disorder, and insomnia disorder following his wife's death in 2019 did not make any attribution to his military service as related to his current diagnoses. The Ph.D. concluded by opining that the preponderance of objective evidence supported the mental health diagnosis made during recruit training and accurately attributed his adjustment disorder to an inability to adapt and conform to the military environment. Additionally, the Ph.D. opined that the command's decision to discharge him with an ELS due to a condition not considered a disability also appeared appropriate for his condition.

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, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board was not willing to modify/upgrade the Petitioner's discharge characterization. The Board noted that Navy discharge policy provides that separations initiated within the first 180 days of continuous active duty will be described as ELS except when an honorable discharge is approved by the Secretary of the Navy in cases involving unusual circumstances not applicable in Petitioner's case.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding Petitioner's post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit upgrade characterization relief. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even under the liberal consideration standard, the Board concluded that Petitioner's ELS characterization was proper in compliance with all Navy directives and policy at the time of his discharge.

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Lastly, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code and was not willing to modify it. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and equitable.

RECOMMENDATION

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

That Petitioner's the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF."

That 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.

11/30/2021

[REDACTED]

Executive Director

[REDACTED]