



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

[REDACTED]  
Docket No: 4987-21  
Ref: Signature Date

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

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

Ref: (a) Title 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 w/attachments  
(2) Advisory opinion by medical professional dated 4 April 2022  
(3) Advisory opinion by legal professional dated 20 December 2021  
(4) Petitioner's response to advisory opinions received 3 May 2022

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 change by upgrading his Entry Level Separation to Honorable, changing his reentry code from RE-4 to RE-1 code, remove the separation code HKK, receive a medical discharge with disability retirement and/or referral to Medical Evaluation Board (MEB) or Physical Evaluation Board (PEB) or placement on the disability retirement list; and removal of any documents or reference in any documents related to alleged drug abuse/possession.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 12 May 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of naval records, and applicable statutes, regulations, and policies, and references (b) through (e). The Board also considered the enclosures (2) – (3), advisory opinions (AOs) from medical and legal professionals, as well the enclosure (4), Petitioner's response to the AOs.

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.

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b. Petitioner entered active duty with the Navy and commenced a period of active duty on 30 July 2019. On 19 November 2019, Petitioner was evaluated in the Student Medicine Clinic, Navy Recruit Training Center (NRTC), ██████████, regarding a recommendation for medical drop from the Navy Special Warfare Preparatory Program and was diagnosed with bilateral stress fractures to the femurs and tibias. He was recommended for medical disenrollment from the program, placed on light duty, instructed to utilize crutches, and attend physical therapy. At the time of this medical evaluation, the Petitioner noted he denied anxiety, depression, and was not suicidal. His mood was documented as euthymic and affect normal.

c. On 30 November 2019, the Petitioner was brought to the main gate of NRTC ██████████ severely intoxicated and with an injured jaw. He was brought to a hospital where he was found to have a baggie filled with powder on him by medical staff, who called the police. On 13 December 2020, the Petitioner was notified of the initiation of administrative separation processing due to misconduct based on drug abuse. The Petitioner did not have a right to an administrative board. On 12 February 2020, the Petitioner was discharged with an uncharacterized entry-level separation due to misconduct based on drug abuse.

d. In 2021, Petitioner applied to the Naval Discharge Review Board seeking to have his discharge upgraded. On 6 April 2021, the NDRB denied his request, explaining that an entry-level separation is appropriate when it is initiated while a member is within the first 180 days of continuous active duty except when another characterization of service is authorized and clearly warranted. According to the NDRB, the Petitioner's "misconduct was thoroughly reviewed by his command and the Separation Authority directed a more favorable Uncharacterized characterization of service."

e. In his petition to this Board, Petitioner contends that he has been diagnosed with post-traumatic stress disorder (PTSD) after his service, and that he suffered stress fractures and a mandible fracture while he was on active duty. He further contends that his injuries were incurred while he was on active duty and thus supports his request for a disability retirement. With respect to his discharge relating to drug abuse, Petitioner contends that he was later found not to have heroin in his system and the substance that he had in his possession was later tested and was determined not to be heroin. Finally, the Petitioner cites references (b), (d), and (e) in support of his petition.

f. In order to assist it in evaluating the Petitioner's contentions, the Board obtained the AOs, enclosures (2) – (3). The enclosure (2) AO from a medical professional was considered unfavorable to Petitioner. According to this AO, the "available in-service medical and personnel records did not contain evidence of a diagnosed mental health condition, or of psychological symptoms/behavioral changes indicative of a diagnosable mental health condition, impairment in occupational functioning, or unfitness for duty due to a mental health condition." The medical AO concluded that "the preponderance of evidence provides insufficient support for the request."

g. The enclosure (3) AO of a legal professional was also considered unfavorable to the Petitioner. According to this AO, the Petitioner failed to rebut the presumption of regularity. In addition, this AO noted that, although the Petitioner was processed for misconduct – drug abuse,

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he was able to receive an uncharacterized entry-level separation instead of an unfavorable discharge characterization.

h. The Petitioner submitted the enclosure (4) rebuttal to the AO, in which he reiterated and clarified the supporting information for his contentions, and provided additional background and information concerning his physical and mental health symptoms and diagnoses. He also stated that the medical AO was performed by a psychiatrist and not another form of doctor, and thus inferring that the medical AO should be given less weight.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined that the interests of justice supports changing Petitioner's narrative reason for separation to Secretarial Authority and his separation code to JFF in order to eliminate any stigma associated with misconduct-drug abuse being listed on his DD Form 214. In reaching this conclusion, the Board reviewed the guidance set forth in references (b) through (e). The Board noted that it is not an investigatory body, and that it determined there were no indications that the presumption of regularity should not apply. Further, the Board found Petitioner's evidence insufficient to rebut the presumption of regularity. On this point, the Board concurred with the enclosure (3) AO. However, the Board determined that the Petitioner is deserving of clemency in the form of removing the stigma of having a negative narrative reason for separation noted on his DD Form 214.

Despite the Board's recommendation to grant partial relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including providing him a disability retirement or referral to a medical or physical evaluation board. Specifically, the Board found no evidence of unfitness during the Petitioner's period of active service. The Board observed the Petitioner's actual reason for separation was a result of his misconduct related to the drug abuse and was not for any perceived physical or mental disability. In reaching this conclusion, the Board substantially concurred with the finding of the enclosure (2) AO.

In addition, the Board concurred with the NDRB finding that Petitioner's uncharacterized discharge remains appropriate. The Board determined that an Honorable discharge during the first 180 days of active duty service was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board found no evidence to support such a finding.

Finally, the Board found that Petitioner's assigned RE code also remains appropriate in light of its findings that the presumption of regularity was not rebutted in his case. The Board concluded Petitioner's drug related misconduct makes him unsuitable for reentry into the Navy. The Board's determination that a change to Petitioner's narrative reason for separation was appropriate as a matter of clemency did not change their opinion as to Petitioner's unsuitability for future naval service.

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## RECOMMENDATION

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

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that at the time of his discharge his narrative reason for separation was "Secretarial Authority" and his SPD code was "JFF."

That no further changes be made to Petitioner's naval record.

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.

5/27/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]