



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

█
Docket No: 5679-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
█

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 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) Certificate of Release or Discharge from Active Duty (DD Form 214)
(3) Nonjudicial punishment of 17 Aug 79
(4) Nonjudicial punishment of 14 Sep 79
(5) Administrative Remarks of 14 Sep 79
(6) Nonjudicial punishment of 9 Nov 79
(7) NAVPERS Form 1070/606 Record of Unauthorized Absence
(8) Psychiatric Evaluation of 24 Aug 83
(9) Special Court Martial of 15 Dec 83
(10) Advisory Opinion of 8 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 by upgrading his characterization of service to general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error and injustice on 20 December 2021 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 Petitioner's naval records, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health professional.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

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[REDACTED]

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 Petitioner's application on its merits.

c. Petitioner reenlisted in the Navy on 30 August 1978 after serving over two years of honorable service. See enclosure (2).

d. On 17 August 1979, Petitioner received nonjudicial punishment (NJP) for failing to obey a lawful order. See enclosure (3).

e. On 14 September 1979, Petitioner received NJP for failing to go to his appointed place of duty and two days of unauthorized absence (UA). Additionally, he was counseled concerning his deficiencies in military behavior and warned that further misconduct, could result in administrative discharge action. See enclosures (4) and (5).

f. On 9 November 1979, Petitioner received NJP for two specification of failing to go to his appointed place of duty, and consuming alcoholic beverages while in a restricted status. See enclosure (6).

g. On 3 June 1980, Petitioner began a period of UA that lasted over three years, ending with his apprehension by civil authorities in [REDACTED] on 9 August 1983. See enclosure (7).

h. On 24 August 1983, a psychiatric evaluation was requested for trial. The evaluation stated that Petitioner was able to distinguish reality from fantasy, and there was no evident of primary affective or thought disorder and is fully responsible for his actions and should be held accountable for his behavior. Additionally noting that Petitioner can meaningfully cooperate with his attorney in his own defense. See enclosure (8).

i. On 15 December 1983, Petitioner was convicted by special court-martial being UA from 3 June 1980 to 9 August 1983 (over three years). He was sentenced to a forfeiture of pay, confinement at hard labor, reduction in paygrade, and a bad conduct discharge (BCD). See enclosure (9).

j. On 19 March 1985, Petitioner was separated from the Navy with a BCD. See enclosure (2).

k. With his application, Petitioner provided his current Department of Veteran Affairs' rated of 100%. He contends that he began drinking alcohol mainly to fit in with the rest of his shipmates; had easy access to alcohol even though he was underage; booze was available 24/7 in the base vending machines; was allowed to drink beer at the enlisted clubs; and his drinking progressed and he was slowly becoming an alcoholic. Petitioner stated that on his first ship, he was a nervous wreck, and was almost electrocuted, crushed to death, blown to bits because his job as a Gunner's mate had him working around nuclear weapons. Further stating that he started

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drinking alcohol and doing some drugs in order to cope, and began having horrible nightmares and panic attacks and he felt like some of his shipmates were out to kill him. He stated that he is now on the long road to recovery and plans to better himself by being clean and sober, properly medicated, and receive psychiatric treatment. Lastly, he stated that his condition started in the military and was not treated correctly until many years later. See enclosure (1).

1. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. The AO concluded that based on the available evidence, it is her considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with a mental health condition during his military service and his misconduct may be mitigated by his mental health condition. See enclosure (10).

BOARD MAJORITY CONCLUSION

The Board majority, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request warrants relief.

The Board majority carefully considered whether the interests of justice warrant relief in Petitioner's case in accordance with references (b through e). In this regard, the Board majority concurred with the advisory opinion issued in Petitioner's case by the Board's qualified mental health professional. The Board majority believed that a nexus exists between Petitioner's mental health condition and his misconduct that merits mitigation in determining an appropriate characterization of service. Specifically, the preponderance of the evidence supports upgrading Petitioner's characterization of service to general (under honorable conditions).

BOARD MAJORITY RECOMMENDATION

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

Petitioner be issued a new DD Form 214 indicating his characterization of service as "general (under honorable conditions)."

A copy of this report of proceedings be filed in Petitioner's naval record.

No further action be granted.

BOARD MINORITY CONCLUSION

The Board minority, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request does not warrant relief.

The Board minority carefully considered whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's assertions, Department of Veteran Affairs' rating of 100%, and the advisory opinion issued in his case by the Board's qualified mental health professional. However, based upon

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review, the Board minority concluded that these mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his three NJPs, special court martial conviction of which was for period of UA lasting over three years, and the August 1983 psychiatric evaluation which stated that Petitioner was fully responsible for his actions and should be held accountable for his behavior, and as such, these facts outweighed the abovementioned mitigating factors.

BOARD MINORITY RECOMMENDATION

In view of the above, the Board minority recommends that Petitioner's request be denied.

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. The foregoing action of the Board is submitted for your review and action.

1/21//2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Minority Recommendation (Deny Relief)

Reviewed and Approved Majority Recommendation (Grant Relief)

2/1/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]