



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

█
Docket No: 6505-21
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) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and 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)
(c) 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

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 by upgrading the characterization of service from "other than honorable" to "general under honorable conditions" on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 7 March 2022 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 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 opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not do so.

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

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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 statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo).

c. Petitioner enlisted in the U.S. Navy on 22 August 1989. On 20 August 1990, Petitioner commenced a period of unauthorized absence (UA) lasting three hours until he surrendered. On 31 August 1990, per a medical consultation entry, Petitioner was diagnosed with borderline intellectual functioning and antisocial and passive aggressive personality traits of insufficient severity to warrant a diagnosis of personality disorder. On 4 and 10 September 1990, Petitioner had two additional periods of UA, both lasting 1.5 hours until he surrendered. On 28 January 1991, Petitioner received his first nonjudicial punishment (NJP) for 65 specifications of UA. On 5 February 1991, Petitioner was issued a counseling warning regarding these deficiencies but retaining him in the naval service. This counseling further advised Petitioner that any additional deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 14 March 1991, Petitioner received a second NJP for a period of UA and for three specifications of failure to obey a lawful order. On 20 March 1991, Petitioner was notified of his impending separation by misconduct as evidenced by his pattern of misconduct (POM). Petitioner elected his right to obtain copies of documents to be forwarded to the Chief of Naval Personnel and waived all other procedural rights. On 22 April 1991, Petitioner's commanding officer recommended he be discharged with an other than honorable (OTH) characterization of service for POM. On 6 May 1991, the discharge authority directed Petitioner be separated with an OTH for POM and, on 17 May 1991, Petitioner was so discharged.

d. Petitioner's contends prior to his enlistment he witnessed his mother pass away in a car accident and he did not realize the effect this had on his mental status. He adds, he still struggles with the images of the car accident and is seen by a mental health counselor weekly. Lastly, he asserts he was unaware of the ability to submit a request to upgrade his Certificate of Release or Discharge from Active Duty Form (DD 214).

CONCLUSION:

The Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an other than honorable discharge. However, in light of reference (c), after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to "general (under honorable conditions)". In making this finding, the Board concluded Petitioner's misconduct was a negative aspect that outweighed the positive aspects of his active duty service.

RECOMMENDATION:

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

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Petitioner be issued a new DD Form 214 indicating the character of service as “general (under honorable conditions)”.

No further changes be made to Petitioner’s record.

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.

3/24/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]