



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

██████████
Docket No: 6613-21
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) 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 28 Jan 22

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, documents submitted in rebuttal, and subsequent AO.

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

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b. Petitioner enlisted and entered a period of active duty in the Navy on 28 January 1985.

c. In August 1986, Petitioner was injured and suffered burns while on duty.

d. Petitioner was convicted by special court martial on 14 July 1988 for wrongful possession of LSD in violation of Article 112a, Uniform Code of Military Justice (UCMJ). He was sentenced to confinement at hard labor for 90 days, forfeiture of \$440 pay per month for 3 months, reduction in rank to the pay grade E-1, and discharge from the service with a bad conduct discharge (BCD).

e. Petitioner requested to be placed on appellate leave on 26 September 1988.

f. On 14 December 1989, Petitioner was discharged with a BCD.

g. Petitioner contends that he was severely burned by steam when repairing a salinity cell that broke due to rust, resulting in second and third degree burns over 61.5% of his body from his neckline to his ankles. He states he believes he developed PTSD and would like to have access to benefits. He states he did not have any prior knowledge of the (drug) charges before or after the accident and was incapable of defending himself at the court martial. He states he did not have access to any evidence or the ability to question witnesses. He contends that since discharge, his life has spiraled downward due to his physical and mental conditions and that he was never treated for PTSD while in-service.

h. In support of this application, Petitioner provided three character references on his behalf, civilian psychiatric evaluations, Alcoholics Anonymous attendance documentation, a negative criminal records background check, university transcripts indicating he has earned a Master of Business degree, and his resume indicating employment since 1991.

i. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 28 January 2022. The AO noted that there was no evidence that Petitioner was diagnosed with a mental health disorder during military service. Post-service, clinicians determined a diagnosis of PTSD that is attributed to the accident in which he was burned; however, there was insufficient information to establish a nexus with his misconduct, as he denied drug use in his statement. Consequently, the AO concluded that there was post-service evidence that the Petitioner may have incurred PTSD during military service but insufficient evidence that his misconduct could be attributed to PTSD. Petitioner submitted rebuttal evidence to the AO for the Board's consideration.

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.

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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 was diagnosed with a mental health disorder during military service. 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, Petitioner's commendable post-service conduct; that Petitioner sought out rehabilitation treatment to manage his alcohol abuse issues and mental health conditions; 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. 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 no further corrective action should be taken.

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.

4/5/2022

[REDACTED]
Executive Director
[REDACTED]