



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

KLM
Docket No: 6834-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, [REDACTED]

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 19 Nov 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 to reflect an upgraded characterization of service.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 18 February 2021 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 that was previously provided to Petitioner, the 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.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted and entered a period of active duty in the Navy on 20 December 1982. On 15 February 1984 Petitioner received nonjudicial punishment (NJP) for an eight day unauthorized absence (UA) and false official statement for altering orders in violation of Articles 86 and 107, Uniform Code of Military Justice (UCMJ). Petitioner received a second NJP on 13 April 198 for consuming alcohol while in a restricted status in violation of Article 92, UCMJ. On 19 October 1985 Petitioner was convicted by special court martial (SPCM) for a 139 day UA and sentenced to confinement at hard labor for three months, forfeiture of \$413.00 pay per month for three months, reduction in rank to the paygrade of E-1, and to be separated from the naval service with a bad conduct discharge. Petitioner was so discharged on 15 March 1988.

d. Petitioner states his country of birth is the [REDACTED]. He contends that while at sea, his ship had trouble refueling, fuel spilled out and started a fire, the engine room caught on fire, and some men were drenched in fuel and burned. He states he saw a man on fire, six Sailors died, and thirty-five were injured. Petitioner contends he suffers from PTSD and still has nightmares about the event. Petitioner further contends he was subjected to a highly racist environment and assigned to clean and take care of the officer staterooms where minorities were usually assigned. He states minorities were not given the opportunity to take tests for promotion and treated as if they were unintelligent due to their accents. Petitioner contends that additionally, while in-service, he wife had extra-marital affairs and he contracted an STD from her after he went to visit her while on leave. He states these stressful incidents led to his misconduct and discharge. He further contends English is a second language, he never had a translator to help him understand the forms, and he did not intentionally make a false statement or alter government orders.

e. Petitioner provided a letter from a civilian mental health provider dated 20 November 2019 stating he had been diagnosed with PTSD and that the disorder existed at the time he was discharged from the Navy.

f. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 19 November 2021. The AO noted in pertinent part that there was insufficient evidence regarding the purported trauma to identify a nexus with Petitioner's misconduct. Consequently, the AO concluded there was post-service evidence that the Petitioner incurred PTSD during military service; however, there was insufficient evidence that his misconduct could be mitigated by PTSD.

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 relief and that his characterization of service should reflect general (under honorable conditions).

The Board applied liberal consideration and took the AO under advisement; however ultimately

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disagreed with its conclusion. In its deliberations the Board confirmed that the refueling incident described by Petitioner did occur and that Petitioner was assigned to the ship at the time of the incident. Based on these findings and Petitioner's credible statement in rebuttal, the Board determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition incurred while in-service. Furthermore, based on the chronology of events, the Board found a nexus between the purported trauma and the misconduct. In particular, the Board noted that the ship fire occurred in November 1983 and that all of Petitioner's misconduct occurred thereafter. However, based on the significant period of UA, the Board determined that partial relief was appropriate and that a general (under honorable conditions) characterization of service is warranted.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating the characterization of service as "General (Under Honorable Conditions)."

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.

3/9/2022

[REDACTED]
Executive Director
[REDACTED]