



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

[REDACTED]
Docket No: 187-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] [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 w/ enclosures
(2) Advisory Opinion of 8 Mar 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 discharge be upgraded from "Other than Honorable" to "Honorable." Enclosure (1) applies.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 April 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (2), the advisory opinion (AO) furnished by qualified mental health provider.

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.

b. Petitioner enlisted and began a period of active duty on 4 October 1993. He served without incident for over a year and earned a trait average of 3.8. On 28 March 1995, Petitioner received nonjudicial punishment (NJP) for Article 128, assault, and Article 134, disorderly conduct. He received a second NJP, on 20 February 1996, for Article 86, for failure to go to his

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appointed place of duty. He was counseled, on 27 January 1997, after refusing to sign an evaluation.

c. From February – March 1997, Petitioner had six reports of unauthorized absence (UA), primarily due to missing early morning musters or duty, and a missed movement. He was also counseled on 17 April 1997 for failing his physical readiness test. On 21 April 1997, Petitioner was convicted by Summary Court-Martial (SCM) of violations of Article 86 for all six specifications of his UA periods, Article 87 for missing movement, Article 91 for willfully disobeying a lawful order, and Article 117 for wrongfully using provoking words. He was reduced to E-1 and sentenced to 25 days of confinement.

d. From June – July 1997, Petitioner had another four periods of UA reported. Although his administrative separation correspondence is not part of his official record, DD Form 214 indicates that he waived a hearing before an administrative board and was discharged with an other than honorable characterization of service, on 4 August 1997, for the reason of misconduct due to a commission of serious offense.

e. Post-discharge, Petitioner began receiving civilian care from ██████████ in ██████████ ██████████, for schizophrenia.

f. Petitioner contends that he suffered from mental illness during his military service. He describes that he did not understand his psychological issues or realize that he was mentally ill, except that he knew he was experiencing life in a strange way, to include hearing voices and seeing things. He states that he was confused, and apologizes for doing wrong things, but explains that he did so without malicious intent because he his brain had changed his perception of right and wrong, which he understands now that he is receiving care and treatment.

g. In support of his request, Petitioner provides documentation of his post-service diagnosis of disorganized schizophrenia, with paranoia and psychosis, by both civilian medical providers and the Department of Veterans Affairs (VA), to include a service connected disability rating based on a review of his in-service records and treatment.

h. Because Petitioner contends that his mental health mitigates his in-service misconduct, the Board requested an AO from a qualified mental health provider. The AO noted that the VA granted Petitioner's service connected disability for mental illness based on evidence that his first psychiatric treatment was during his military service, but that those records were not available to the AO for review and that Petitioner's records contain no evidence that concerns were raised which would have warranted a mental health referral during his disciplinary processing. The AO further observed that, without more evidence regarding his in-service symptoms and behaviors or mental health treatment, there was insufficient detail to establish a nexus between his mental health condition and misconduct. As a result, the AO opined that there is post-service evidence Petitioner incurred a mental health condition during his military service but insufficient clinical evidence his misconduct could be attributed to his condition. In rebuttal to the AO, he also submits a letter from his VA psychiatrist explaining that his weekly clinical treatment and medication is "reserved for the most ill of psychotic patients" and that he would

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not be capable of providing additional records due to his marginal functionality; however, she indicates a belief that the Board has access to Petitioner's medical records.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of partial relief with respect his characterization of service. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

The Board notes Petitioner's misconduct and does not condone it; however, the Board concluded that a nexus exists between Petitioner's misconduct and his mental health condition. Consistent with the AO, the Board noted the VA's factual determination that Petitioner's mental health disability is service connected based on health records documenting his receipt of treatment during military service. While the Board acknowledged the AO's concern for identifying the date of Petitioner's mental health treatment, the Board observed the dramatic change in Petitioner's behavior over his first two years of service in comparison to his latter two years of service. The Board also took into account that, notwithstanding his two NJPs, SCM, and subsequent four periods of UA, Petitioner's records indicate the basis of his separation was specifically for commission of a serious offense and not a pattern of misconduct, which provides sufficient context to establish that the timing of the misconduct that resulted in his separation occurred within the final few months of his active service. Based on a thorough review of Petitioner's service records and post-service evidence, the Board found that Petitioner's misconduct, beginning in February of 1997 prior to his separation, was reasonably attributable to his mental illness and that his mitigating factors were sufficient to outweigh his misconduct. As a result, the Board determined that his request merited partial relief in the form of upgrading his characterization of service to General (Under Honorable Conditions) (GEN).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. In making this finding, the Board considered that Petitioner's record contained a NJP prior to the period when the Board felt his mental health issues affected his behavior. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form

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214) indicating that his “General (Under Honorable Conditions)” discharge was issued on 4 August 1997.

That 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 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.

5/2/2022

[REDACTED]

Executive Director

[REDACTED]