



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

[REDACTED]  
Docket No: 415-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN, XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) USD Memo, "Clarifying Guidance to Military Discharge Review 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)  
(e) 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 (Wilkie Memo)

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 to upgrade his characterization of service and to make other conforming changes to his DD Form 214 following his discharge for fraudulent enlistment.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 11 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 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)

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN, XXX-XX-[REDACTED]

furnished by qualified mental health provider, which was previously provided to Petitioner. Petitioner was afforded an opportunity to submit an AO rebuttal and he did do so.

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.

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

c. Petitioner enlisted in the Navy and began a period of active service on 31 August 1996. Petitioner's pre-enlistment physical on 16 March 1996 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 31 March 1997 Petitioner commenced a period of unauthorized absence (UA) that terminated after twenty-nine (29) days with his surrender to military authorities on 29 April 1997. On 9 May 1997 Petitioner received non-judicial punishment (NJP) for two separate specifications of UA. Petitioner did not appeal his NJP.

e. On 20 June 1997 Petitioner underwent an examination at the Fleet Mental Health Unit, Branch Medical Clinic, [REDACTED]. Petitioner was diagnosed with a personality disorder, not otherwise specified with anti-social, narcissistic, and passive-aggressive features. The examining Navy Medical Officer recommended Petitioner's administrative separation. On 1 July 1997 the Petitioner's commanding officer (CO) issued him a "Page 13" counseling warning informing Petitioner that the CO was not bound by such medical recommendation and also affording him an opportunity to take certain corrective action.

f. However, on 3 July 1997 the Chief of Naval Personnel (CNP) notified the CO that Petitioner failed to disclose his entire arrest record on his pre-enlistment application. Specifically, the Petitioner did not list his 20 November 1994 arrest for "grand theft by embezzlement." CNP directed Petitioner's CO to process him for fraudulent enlistment.

g. On 22 July 1997 Petitioner's command initiated administrative separation proceedings by reason of defective enlistment and induction due to fraudulent entry into the naval service. Petitioner waived his rights to submit statements to the separation authority and to request an administrative separation board. Ultimately, on 20 August 1997 Petitioner was discharged from the Navy with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code. The Board specifically noted on his DD Form 214 that the narrative reason for separation was erroneously listed as "Misconduct."

h. In short, Petitioner contended that while on active duty he experienced depression, anxiety, and PTSD and used alcohol to cope. Petitioner also contended that he was recommended for a mental health separation right before being separated for fraudulent enlistment. Petitioner further argued that his recruiter failed to accurately report the arrest information on his enlistment paperwork.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN, XXX-XX-[REDACTED]

i. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records, and issued an AO on 28 January 2022. The Ph.D. initially observed that Petitioner's in-service records did contain evidence of a personality disorder diagnosis, but not a diagnosis of an unfitting mental health condition. The Ph.D. noted that Petitioner did not provide information about the trauma related to his PTSD or clarifying information related to his other mental health conditions. The Ph.D. determined that although Petitioner provided documentation of post-discharge mental health diagnoses, there was no information regarding the criteria he met for such diagnoses or indication they were service-connected. The Ph.D. concluded by opining that the evidence failed to establish Petitioner suffered from a mental health condition on active duty or his in-service misconduct could be mitigated by a mental health condition.

## CONCLUSION

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or personality disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate other applicable narrative reasons are warranted. Moreover, the Board noted that Petitioner's administrative separation was based on a fraudulent enlistment and not for either a personality disorder or misconduct. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for either a mental health-related condition or misconduct and that certain remedial administrative changes are warranted to the DD Form 214.

Additionally, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence that he suffered from any type of unfitting mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of his misconduct outweighed any and all mitigation offered by such mental health conditions. 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 otherwise not be held accountable for his actions.

The Board concurred with the AO that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN, XXX-XX-[REDACTED]

for military service and consideration for administrative separation. Accordingly, the Board concluded that Petitioner's personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in his misconduct because it did not impair his ability to be accountable for his actions or behaviors.

Notwithstanding the recommended corrective action below, the Board was not willing to modify/upgrade the Petitioner's discharge characterization. The Board unequivocally did not believe that Petitioner's record was otherwise so meritorious to deserve a discharge upgrade. The Board concluded that significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of Petitioner's military record. The Board also determined that Petitioner's misconduct constituted a significant departure from the conduct expected of a Sailor and that the record clearly reflected Petitioner's misconduct was intentional and willful and indicated he was unfit for further service. The Board determined the simple fact remained is that Petitioner left the Navy while he was still contractually obligated to serve and specifically on one occasion he went into a UA status for twenty-nine (29) days without any legal justification or excuse.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding Petitioner's post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit upgrade characterization relief. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even under the liberal consideration standard, the Board concluded that Petitioner's OTH characterization was proper in compliance with all Navy directives and policy at the time of his discharge.

Lastly, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code and was not willing to modify it. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and equitable.

#### RECOMMENDATION

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending/separation date of 20 August 1997, to indicate the following change:

Block 28: FRAUDULENT ENTRY INTO NAVAL SERVICE.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN, XXX-XX-[REDACTED]

Following the corrections to the DD Form 214 for the period ending/separation date of 20 August 1997 indicating the revised narrative reason for separation in Block 28, that all other information currently listed on such DD Form 214 remain the same.

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 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.

3/23/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]