



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

[REDACTED]
Docket No: 1004-22

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]
[REDACTED] USN

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 21 Feb 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 to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of [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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (2), an advisory opinion (AO) furnished by a 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.

b. Petitioner enlisted and began a period of active duty on 27 April 1999. He received the Good Conduct Medal (GCM), first award during his first enlistment and reenlisted on 7 April 2004; however, his period of continuous "Honorable" active service from that enlistment and discharge is not documented on his Certificate of Release or Discharge from Active Duty (DD Form 214).

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c. Petitioner received his GCM second award on 27 April 2005. He served the entirety of his naval career without misconduct with the exception of single naval drug lab urinalysis which reported positive results on 5 August 2005 for metabolites of cocaine use. He received nonjudicial punishment (NJP) for his violation of Article 112a for wrongful use of a controlled substance, for which he was reduced to Yeoman Third Class/E-4 and awarded suspended forfeitures on 27 January 2006. Following his NJP, Petitioner was notified of mandatory administrative separation processing for misconduct due to drug abuse with a least favorable characterization of other than honorable, and he waived his right to consult counsel, to request an administrative hearing, and to submit a statement on his behalf.

d. On 7 February 2006, Petitioner's commanding officer forwarded Petitioner's administrative discharge package, recommending a characterization of General (Under Honorable Conditions) (GEN) and noting positive factors in Petitioner's favor, to include his candor in admitting to his drug use, his post-misconduct actions of continuing to perform at an exceptional level while awaiting administrative action, and his participation as a key witness in an ongoing investigation of a former service member by Naval Criminal Investigative Service. Based on this recommendation, Commander, Navy Region Southeast approved Petitioner's discharge with a GEN characterization, and he was discharged on 27 February 2006.

e. Petitioner contended that he suffered from post-traumatic stress disorder (PTSD) and mental health (MH) problems during his military service which were untreated prior to his discharge, to include that he attempted suicide in 2005. He claimed that he reached out for help but did not receive it, and he provided documentation of his disability rating from the Department of Veteran's Affairs (VA) which identifies a service-connected disability rating for a persistent depressive disorder with a panic disorder, which his records note was previously rated as a major depressive disorder and PTSD which was not service-connected.

f. Because Petitioner contends that in-service MH conditions mitigate his drug abuse misconduct, the Board requested and considered enclosure (2). The AO observed that, although Petitioner had no documented in-service diagnosis, his post-service VA records reflect a diagnosis of a persistent, service-connected MH condition, that Petitioner's misconduct of drug use was out of character based on a review of his service record, and that he had received a GEN characterization upon discharge. As a result, the AO concluded Petitioner may have used cocaine as a maladaptive coping skill to avoid acknowledging his MH symptoms, that he exhibited behaviors associated with a mental health condition during his military service which might mitigate his drug abuse misconduct.

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, only, with respect to the error in omitting his period of continuous honorable service from his DD Form 214 remarks. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

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Following a thorough review of Petitioner's service records, the Board found that Petitioner served the duration of his first period of enlistment without misconduct and that his fully honorable service during that time merits proper documentation. In regard to Petitioner's misconduct during his second period of enlistment, however, the Board did not concur with the observations or opinion of the AO based, in part, on the VA determination that Petitioner's PTSD was not service connected. Further, while the Board considered Petitioner's post-discharge depression rating from the VA, when evaluated in light of Petitioner's consistent, above average performance of duty, the Board determined there was a distinct absence of symptoms or behaviors which might indicate an underlying mental health condition contributed to his misconduct. As a result, and absent evidence to support a contrary conclusion, the Board found Petitioner's performance probative that he was not suffering symptoms or behaviors of his contended MH condition during his military service.

Therefore, and after additionally factoring that Petitioner has already received the significant benefit of a favorable command recommendation in securing his current GEN discharge, the Board determined that the totality of Petitioner's mitigating factors submitted for consideration did not outweigh the severity of his misconduct of wrongful cocaine use; as such, further relief in the form of a change to Petitioner's character of discharge is not warranted.

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

RECOMMENDATION:

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty, (DD Form 215), identifying his "period of continuous honorable service from 27 April 1999 to 27 February 2006" in his Block 18, Remarks.

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.

3/31/2022

[REDACTED]
Executive Director
[REDACTED]