



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

██████████
Docket No: 1174-22
6474-17
8757-14
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 7 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 naval record be corrected to reflect an Honorable or General (Under Honorable Conditions) characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 3 June 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 enclosure (2), the advisory opinion (AO) furnished by a qualified mental health provider, and the documents submitted in rebuttal.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

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

- 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 entered a period of active duty in the Navy on 3 October 1984.
- c. On 24 September 1985, Petitioner received nonjudicial punishment (NJP) for being absent from his appointed place of duty and failure to obey a lawful order in violation of Articles 86 and 92, Uniform Code of Military Justice (UCMJ).
- d. Petitioner received a second NJP, on 26 January 1987, for wrongful use of a controlled substance, cocaine, in violation of Article 112a UCMJ.
- e. On 19 February 1987, Petitioner was notified of administrative separation processing for misconduct due to commission of a serious offense and drug abuse as evidenced by a positive urinalysis for cocaine. Petitioner did not consult with counsel and waived an administrative discharge board.
- f. On 11 March 1987, Petitioner's commanding officer recommended Petitioner be separated with an Other Than Honorable (OTH) characterization of service. He further stated that Petitioner was evaluated for drug dependency by a medical officer and found not to be drug dependent.
- g. Petitioner was discharged, on 31 March 1987, with an OTH characterization of service.
- h. On 17 September 2012, Petitioner was diagnosed by a civilian provider with moderate, recurrent Major Depression, alcohol dependence in full remission, and cocaine dependence in remission. The document further indicated that Petitioner was attending Narcotics Anonymous (NA) and Alcohol Anonymous (AA) meetings.
- i. On 16 February 2017 and 17 May 2017, Petitioner was diagnosed by a civilian provider with Depression with anxiety. The document noted that Petitioner had a "growing ability to self-soothe while remaining sober."
- j. On 5 October 2021 Petitioner was diagnosed by a civilian provider with Generalized Anxiety Disorder, Trauma and Stressor-related Disorder, and persistent Depressive Disorder with mixed features, moderate. The document stated "[h]e remains committed to his sobriety and recently got a new sponsor who he feels good about working with."
- k. Petitioner contends that he suffered from undiagnosed depression during his service which led to his misconduct. He states that he was sexually abused over a period of four years when he was eight years old. He further states during his enlistment he did not receive appropriate treatment and, therefore, did not fully understand how that experience deeply impacted his behavior. He states that during the holiday season of 1986, he returned home on leave and socialized with individuals he sought to avoid while growing up. He contends that during this time he inhaled a cigarette that would lead to his discharge. He states that if he had a professional tell him that returning home on leave – where such horrible memories existed for

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

him – could create an increased risk for negative behavior based on his untreated depression, then perhaps an otherwise good young man could have avoided a terrible mistake. Petitioner further contends his actions that led to his administrative separation were not intentional, but rather manifestations of his severe untreated depression and trauma. He argued that he should have been evaluated and offered treatment. He also contends his post-service conduct warrants clemency and, although he is a licensed nurse in several states, he cannot obtain employment with any Department of Veterans Affairs attached facilities due to his characterization of service.

l. In support of his application, Petitioner provided 21 character references on his behalf from family members, friends, medical providers, work colleagues, religious leaders, and his academic advisor. He also provided higher education transcripts and degrees, an article describing his work with opioid addiction, and several certificates of appreciation, completed training, and commendations. Petitioner's legal brief, character references, and personal statement further described his post-service conduct to include rehabilitation treatment, sobriety for 20 years, and his employment as a full time registered nurse. The supporting documentation indicates Petitioner works primarily with disadvantaged individuals to include the homeless and previously incarcerated, sexual abuse victims, substance abusers, and persons diagnosed with HIV, AIDS, and mental health conditions. The supporting documentation further noted Petitioner volunteered during the COVID-19 pandemic in high risk areas and speaks at drug detoxification and rehabilitation centers, churches, NA and AA meetings, and community health centers.

m. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 7 March 2022. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, he has received several mental health diagnoses including substance use disorder diagnoses, a trauma-related diagnosis, and anxiety and depression diagnoses. There is no evidence that these diagnoses were incurred during military service, and the Petitioner does not appear to be making that claim. He contends that the diagnoses began prior to military service. However, there is no medical evidence to support his claims, as the first record of treatment occurred almost 20 years following separation from service. Additionally, he repeatedly denied history of mental health treatment or experience of mental health symptoms during military service. While returning to a difficult family situation likely added stress to the Petitioner's leave, there is no evidence that his misconduct was coerced or against his will. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there insufficient evidence that the Petitioner may have incurred a mental health condition during

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

military service. There is some post-service evidence that he may have been experiencing a mental health condition existing prior to entry into service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.

n. In response to the AO, Petitioner provided supplemental evidence arguing that the traumatic experiences that should mitigate his misconduct occurred prior to his entry into the Navy and his mental health condition existed while he was on active duty.

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 that Petitioner's request warrants relief, and that his characterization of service should reflect general (under honorable conditions).

The Board applied liberal consideration in accordance with the references; however concurred with the AO and found there was insufficient evidence to determine that Petitioner's misconduct could be mitigated by an unfitting mental health condition. The Board found no error in Petitioner's OTH characterization of service and determined it was warranted by Petitioner's record of misconduct at the time of discharge.

Despite finding no error 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 post-service sobriety condition, educational pursuits, employment as a first responder, volunteerism, the nonviolent nature of the misconduct, and the passage of time since Petitioner's discharge. Accordingly, as a grant of clemency, the Board determined that Petitioner's post-service record warrants relief in the form of an upgrade to General (Under Honorable Conditions) and a change to his separation reason to Secretarial Authority.

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 outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

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 "General (Under Honorable Conditions)," narrative reason for separation as "Secretarial

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

Authority,” separation authority as “MILPERSMAN 1910-164,” and separation code as “JFF.”
The reentry code shall remain the same.

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.

6/28/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]