



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

█
Docket No: 1420-22

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

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 (AO) of 18 Apr 22
(3) Rebuttal to AO of 5 May 22
(4) AO Response to Rebuttal of 5 May 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. Enclosures (1) through (4) apply.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 20 May 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).

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 in the Navy and began a period of active duty on 10 August 1989. While stationed at █, █, he was counseled that proper use of government telephones did not permit personal long-distance calls.

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[REDACTED], USN

c. A juvenile court order from 6 October 1992 indicates that Petitioner's minor sister suffered first degree rape by another minor; notably, the guardians of the perpetrator were ordered to pay punitive restitution to the victim and her family and was issued a no-contact order, in addition to other restrictions and compliance requirements.

d. Petitioner received nonjudicial punishment (NJP) with an oral reprimand on 17 December 1992 for Article 92 when he failed to obey a lawful general order by possessing a dangerous weapon in a vehicle onboard a military installation.

e. On 16 February 1993, Petitioner absented himself without authorization until his surrender on 10 May 1993. On 10 June 1993, a supplemental court order addressed the delinquency of the juvenile perpetrator regarding his compliance with the terms of the original court order. Petitioner was found guilty before Summary Court Martial (SCM) on 22 June 1993 for violation of Article 86 due to his extended unauthorized absence (UA). He was notified of administrative separation for misconduct due to commission of a serious offense, and he waived his right to a hearing before an administrative board.

f. On 23 August 1993, Commanding Officer, [REDACTED], recommended that Petitioner be separated with a General (Under Honorable Conditions) characterization of service based upon his above average performance from October 1989 through 1992; however, Petitioner's discharge was directed by Naval Personnel Command with an other than honorable characterization of service, and he was discharged on 24 September 1993 with a final trait average of 3.35.

g. Petitioner contends that he was suffering from major depression but did not receive treatment. He relates being the only son and oldest child of four with a single mother and asserts that he learned while home during leave that his 9-year old sister had been raped. Rather than return from leave, he remained absent because he felt he had let his family down by not being there to protect her and wanted to find the person responsible. He acknowledges that he did not handle the situation well and that he was not considering, at the time, how his separation under other than honorable conditions would have on the rest of his left, but that he has spent his life since trying to be the best person he can.

h. In support of his contentions, Petitioner submitted court records documenting the legal actions taken against his sister's assailant. He submitted additional post-discharge clemency matters to include that he was recently diagnosed with Hodgkin's lymphoma, that he was married for 25 years, and that he has remained active in his community and church to include volunteering to help homeless and disabled veteran's since 2008. In support of his contentions of suffering a mental health condition during his military service, he submits evidence of decision by the Department of Veteran's affairs rating him with a service connected disability for treatment purposes for generalized anxiety disorder.

i. Because Petitioner contends a mental health condition, the Board also requested enclosure (1), the AO, for consideration. The AO noted that, although there is post-service evidence that Petitioner suffered a mental health condition attributable to his military service, there is insufficient evidence that his misconduct could be attributed to that condition. The AO based

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this determination upon the lack of clarity and apparent inconsistent timing of Petitioner's UA period against his statement that the reason for his UA was to "find" the perpetrator of the sexual assault against his sibling when the court records reflect that the perpetrator's identity was already known under the initial court order prior to Petitioner's UA period.

j. Petitioner submitted additional medical records in rebuttal to the AO; however, upon review of these additional records, the AO found no information which would materially change the original opinion.

CONCLUSION:

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

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board concurred with the AO that Petitioner's service connected mental health condition does not appear to have a nexus to his misconduct. However, the Board considered Petitioner's circumstances in regards to applying clemency and found that the totality of favorable matters he presented outweighed the nature and severity of the misconduct which formed the basis of his misconduct discharge; in addition to the applicable clemency factors outlined in reference (e), the Board gave considerable weight to the favorable recommendation made by the Commander, [REDACTED], and to Petitioner's above-average quality of service prior to the legally documented tragedy he and his family endured prior to his NJP or SCM. Therefore, the Board determined that it is in the interest of justice to grant the requested relief.

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 214) indicating that on 24 September 1993, his "General (Under Honorable Conditions)" discharge was issued.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/4/2022

