



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

[REDACTED]  
Docket No. 1607-22  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)  
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)  
(d) USD Memo, 25 Aug 17 (Kurta Memo)  
(e) USD Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Certificate of Release or Discharge from Active Duty (DD Form 214), 27 Mar 06  
(3) NAVPERS 1070/601, Immediate Reenlistment Contract of 2 Sep 03  
(4) Service Page 3 (Awards)  
(5) NAVPERS 1070/613, Administrative Remarks, 3 Mar 06 (NJP)  
(6) CO, COMNAVCRUITCOM 1900 Ser 00J/14527, 13 Mar 06  
(7) NDRB Docket No. ND08-01087, 29 Aug 08  
(8) BCNR Brief Sheet, Docket No. 1573-19  
(9) BCNR Decision, Docket No: 1573-19, 12 Nov 19  
(10) Medical Advisory Opinion, 31 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 characterization of service be upgraded.

2. The Board reviewed Petitioner's allegations of error and injustice on 17 June 2022 and pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider, enclosure (10), which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not do so.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or 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.

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b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with reference (d).

c. Petitioner enlisted in the Navy and began a period of active duty on 15 September 2000. He reenlisted, on 2 September 2003, for a period of 3 years and was awarded the Good Conduct Medal on 15 September 2003. Consistent with policy, Petitioner was not issued a DD Form 214 upon completion of this honorable period of service. See enclosures (2), (3), and (4).

d. On 3 March 2006, Petitioner accepted nonjudicial punishment (NJP) for a violation of Article 112a after testing positive for marijuana metabolites. As a result he was reduced to E-4, awarded forfeitures of pay, processed for administrative separation for misconduct due to drug abuse, and discharged with an Other Than Honorable (OTH) characterization of service. Upon his discharge, Petitioner was issued a DD Form 214 omitted the requisite remark for his period of continuous honorable service.<sup>1</sup> See enclosures (2), (5), and (6).

e. Petitioner previously submitted requests to the Naval Discharge Review Board (NDRB) in 2008 and to the Board in 2019. He initially provided NDRB with only a personal statement contending that his record of service reflects good conduct with the exception of a single instance of misconduct and that his post-service conduct warranted clemency. Although NDRB noted that Petitioner “had enough years” of service to understand the Navy’s zero tolerance policy, it overlooked the erroneous omission of the period of continuous honorable service from Petitioner’s DD Form 214. Similarly, Petitioner previously contended to the Board that he believed his record contained erroneous information because the Department of Veterans Administration had issued him a letter identifying his OTH discharge as “dishonorable.” In his 2019 request, Petitioner expressly claimed that he had an honorable discharge for the period of service from his first enlistment and that his discharge record had the wrong information.<sup>2</sup> However, during this review of his record, his reenlistment was not briefed, the omission of his continuous period of active service from enclosure (2) was not briefed, and he was not granted relief. See enclosures (1), (2), (3), (7), (8), and (9).

f. Petitioner now seeks reconsideration, contending that he has spent the past 15 years bettering his life to become a reliable and mature person in good standing, to include obtaining a Bachelor of Science in criminal justice and successfully pursuing a career in law enforcement. In support of his contentions, he submitted evidence of his academic and employment history, to include 6 years serving as a peace officer for the ██████████ Unified Court system prior to pursuing a master’s degree in cybersecurity to further his career. Petitioner submitted six letters in support of his character, to include letters from:

- A currently serving Senior Chief who was his supervisor at the time of his disciplinary processing, describes that Petitioner was experiencing a dark period in his life at the time, that the positive urinalysis was a shock, that Petitioner never behaved “like a person being discharged,” and that he believes Petitioner should be permitted to seek reenlistment;

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<sup>1</sup> As a result of this error, Petitioner may have been ineligible for veteran’s benefits.

<sup>2</sup> Although Petitioner’s request specified a period from 15 September 2000 through 14 September 2004, his reenlistment contract reflects an early reenlistment in September of 2003.

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- A Judge for the [REDACTED] County Family Court, for whom Petitioner provided peace officer services, attesting that Petitioner is a civic-minded person who is focused on helping others and bettering the community;
- The Chief Clerk of the Court for whom he worked more than 5 years, describing that Petitioner demonstrated integrity and high regard in serving the public as a dedicated professional;
- A coworker of over 6 years in the court system who describes that, in addition to being professional, courteous, respectful, and diligent, Petitioner demonstrated compassion and empathy in handling the challenges faced in family court;
- Two overall positive recommendations from church members who attest to his growth and transformation in attaining a balanced life and his aid in helping others shape their lives; and,
- A positive recommendation from his current employer, a Vice President at [REDACTED], where he now works as a human resources recruiter.

Petitioner also submitted evidence of his post-discharge diagnosis of chronic post-traumatic stress disorder from the Department of Veterans Administration.

See Enclosure (1).

g. Because Petitioner contends experiencing a mental health condition during his military service, his application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. The AO noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with PTSD or another mental health condition during military service. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. Post-service, the Petitioner has been diagnosed with PTSD attributed to military combat by the VA. Unfortunately, the medical records and his personal statement are not sufficiently detailed to provide a nexus with his misconduct. The evidence is temporally remote from his military service and nonspecific. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, 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 is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed PTSD."

See Enclosure (10).

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**BOARD CONCLUSION:**

After careful review and consideration of all of the evidence of record, the Board determined that partial relief is warranted in the form of correcting Petitioner's discharge records to reflect the continuous period of active service from his first enlistment, however, the Board did not find that Petitioner request for an upgraded discharge merited relief.

Because Petitioner based his claim for relief upon a mental health condition, his application was reviewed in accordance with the guidance of references (b) through (e). Accordingly, the Board accounted for liberal consideration of Petitioner's contentions. Most significantly, the Board concurred with the opinion of the AO that there was insufficient evidence Petitioner suffered from a mental health condition during his military service or that his PTSD might mitigate his misconduct. Additionally, the Board noted that, although Petitioner's VA diagnosis references his diagnosis of PTSD as attributable to military combat, they found no evidence of a combat deployment in Petitioner's service records. Although the Board acknowledged that Petitioner's in-service misconduct was limited to a single instance of marijuana use and that he submitted a variety of documentary evidence and letters in support of his post-discharge character, the Board ultimately concluded that the mitigation evidence in his case was insufficient to outweigh his conscious illegal drug use or merit clemency in his case. As a result, the Board's partial grant of relief was limited to adding his continuous period of honorable service to his discharge records to correct the erroneous omission.

**BOARD RECOMMENDATION:**

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a DD Form 215 reflecting that Block 18—Remarks, include his period of continuous honorable service from 15 September 2000 through 1 September 2003.

That no further corrective action should be taken.

That a copy of this report of proceedings be filed in Petitioner's naval record.

**EXECUTIVE DIRECTOR CONCLUSION:**

The Board<sup>3</sup> found that Petitioner's request warranted only partial relief for his previous period of continuous honorable service. Although I concur with the Board's findings that Petitioner submitted insufficient evidence to support his contention that PTSD mitigated his misconduct, I find that the entirety of Petitioner's matters in clemency sufficiently outweigh his single instance of marijuana use to merit an upgrade of his final discharge to "General (Under Honorable Conditions)" and change his narrative reason for separation to "Secretarial Authority" with associated changes to his separation authority, separation code, and reentry code.

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<sup>3</sup> The Board Minority recommended that Petitioner's characterization of service be upgraded to General (Under Honorable Conditions) based on clemency.

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Although I note that Petitioner used marijuana while on active duty and do not condone it, I weighed the specific guidance in reference (e) applicable to Petitioner's request for relief, to include the following relevant factors: Petitioner's sole misconduct is the example used to illustrate that the relative severity of some misconduct can change over time, a factor further supported by the nature of his post-discharge employment, having served over 6 years as a judicial Peace Officer in ██████████; Petitioner's misconduct was nonviolent and without aggravating factors; if anything, after reviewing the letter from his senior enlisted leadership, evidence of Petitioner's excellent post-NJP behavior and performance of duties during his impending discharge, as well as other personal circumstances serves to retrospectively mitigate his misconduct. Specifically, I considered both actual and implied evidence of Petitioner's rehabilitation and character which includes the tenure and service-oriented quality of his job history in a sworn, badged law enforcement capacity, which presumptively reflects a lack of criminal activity since his discharge. To that extent, and in light of his in-service misconduct, I credit that he knowingly sought a career which would subject him to routine drug testing. Further, I recognize that he willingly placed himself in harm's way and assumed responsibility for maintaining peace amidst a contentious legal environment wrought with interpersonal conflict, with the result that his notable character references include both a sitting judge for the state of ██████████ and clerk of court both attesting to his empathetic handling of the sensitive domestic matters inherent in Family Court claims. Additionally, I considered larger import of the erroneous omission of the Block 18 remarks documenting Petitioner's period of continuous honorable service. I regrettably note that correction of this error was overlooked during two prior reviews of his naval record, even after Petitioner specifically contended in 2019 that he had a period of honorable service which was omitted from his discharge record. While this particular error would, itself, not normally rise to the level of an injustice that merits correction beyond the actual error, I find it noteworthy that, in spite of the collateral consequence this error would presumably have on his veterans benefits over the nearly 16 years since Petitioner's discharge, Petitioner's positive post-discharge conduct nonetheless includes obtaining his undergraduate degree in criminal justice without the aid of the veteran education benefits to which he would otherwise have been entitled.

As a result, I found that the totality of clemency factors in Petitioner's favor outweighed his misconduct of a single instance of marijuana and determined that the evidence supported a grant of relief as recommended below. However, despite my belief that relief is warranted in Petitioner's case, I do not believe it is appropriate to grant Petitioner an upgrade to an honorable discharge. An honorable discharge is appropriate only if a Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. Based on his drug abuse, I concluded that certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record, even after considering the matters submitted in clemency, and that a General (Under Honorable Conditions) discharge characterization and no higher is appropriate.

#### EXECUTIVE DIRECTOR RECOMMENDATION:

In view of the above, I recommend that the following corrective action be taken on Petitioner's naval record:

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That Petitioner be issued a new DD Form 214 with a "General (Under Honorable Conditions)" character of service, "MILPERSMAN 1910-164" separation authority, "JFF" separation code, "RE-1J" reentry code, "Secretarial Authority" narrative reason, and Block 18—Remarks, include his period of continuous honorable service from 15 September 2000 through 1 September 2003.

That no further changes be made to Petitioner's record.

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 titled matter.

5. The foregoing action of the Board is submitted for your review and action.

8/3/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Recommendation (Partial Relief)

Reviewed and Approved Executive Director Recommendation (Grant Relief)

Reviewed and Approved (Deny Relief)

8/15/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

Signed by: [REDACTED]