



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

█  
Docket No: 1608-22

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, XXX-XX-█

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.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 10 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 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

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by 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. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Navy and began a period of active service on 5 October 1998. Petitioner's enlistment physical, on 31 July 1998, and self-reported medical history noted no neurologic or psychiatric conditions or symptoms.

d. While on active duty, Petitioner was diagnosed with post-traumatic stress disorder (PTSD) and an adjustment disorder with depressed mood. In March 2003, Petitioner received non-judicial punishment (NJP) for one specification of marijuana use. Petitioner did not appeal his NJP.

e. On 7 March 2003, Petitioner was notified he was being processed for an administrative discharge by reason of misconduct due to drug abuse. Petitioner expressly waived his rights to consult with counsel, submit a written statement, and to request an administrative separation board. In the interim, on 24 March 2003 Petitioner's separation physical noted his diagnoses for PTSD and adjustment disorder with depressed mood. Ultimately, on 3 April 2003, Petitioner was discharged for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

f. In short, Petitioner contended that he was suffering from PTSD and was self-medicating with marijuana. Petitioner argued that PTSD was a causative factor for the behavior underlying his OTH discharge, and that the Board must view his mental health condition as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

g. 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 16 May 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did contain evidence of a diagnosis of a mental health condition (i.e., PTSD and Adjustment Disorder with depressed mood). The separation physical indicated he also received mental health treatment during his military service. It is plausible he resorted to maladaptive coping skills (i.e., marijuana) even when participating in or having had mental health treatment, particularly given his report of increased stressors and lack of positive results from medication.

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The Ph.D. concluded, “[b]ased on the available evidence, it is my clinical opinion there is in-service evidence of a diagnosis of PTSD that can be attributed to military service. There is also evidence that his misconduct can be attributed to PTSD.”

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner’s request warrants relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the wrongful use of marijuana, the Board determined that Petitioner’s service-connected PTSD mitigated the one isolated instance of misconduct used to characterize his discharge during a nearly four and one-half year enlistment. The Board concluded that the Petitioner’s PTSD-related conditions and/or symptoms as possible causative factors in the singular misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner’s misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner’s service as having been under OTH conditions, and that a discharge upgrade to “Honorable” (HON) is appropriate at this time.

Additionally, in light of the Wilkie Memo, and while not necessarily excusing or endorsing the Petitioner’s drug-related misconduct, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a discharge upgrade to HON. The Board noted that other than the one NJP for marijuana use, Petitioner’s service record did not contain any other “Page 13” counseling warnings, NJPs, and/or any other disciplinary or adverse administrative matters.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner’s reentry code. 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 in compliance with all Navy directives and policy at the time of his discharge

#### RECOMMENDATION:

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

That Petitioner’s character of service be changed to “Honorable,” the narrative reason for separation should be changed to “Secretarial Authority,” the separation authority be changed to “MILPERSMAN 1910-164,” and the separation code be changed to “JFF.”

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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Petitioner shall be issued a new Honorable Discharge Certificate.

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.

6/14/2022

[REDACTED]

Executive Director

Signed by [REDACTED]