



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

[REDACTED]
Docket No: 1660-22

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,
[REDACTED]

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 make other conforming changes to his DD Form 214 following his involuntary discharge for an alcohol rehabilitation failure.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 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, 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 the advisory opinion (AO) furnished by qualified mental health provider. Although Petitioner was given the opportunity to submit an AO rebuttal he did not do so.

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, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the Navy and began a period of active service on 28 September 2000. Petitioner's pre-enlistment physical examination on 7 September 2000 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Petitioner also denied any pre-service alcohol abuse on his self-reported medical history. On 18 January 2001, Petitioner reported for duty on board the [REDACTED] in [REDACTED]
[REDACTED]

d. On 18 April 2001, Petitioner received non-judicial punishment (NJP) for disorderly conduct/drunkenness, and incapacitation for duty. Petitioner did not appeal his NJP. On 3 July 2001 Petitioner received NJP for disorderly conduct/drunkenness, and assault. Petitioner received the maximum punishment permitted at NJP. Petitioner did not appeal his NJP. On 26 July 2001, Petitioner received NJP for unauthorized absence (UA), missing ship's movement, disobeying a superior commissioned officer, and desertion. Petitioner did not appeal his NJP.

e. Between 20 August 2001 and 7 December 2001, Petitioner completed a total of seven weeks of alcohol rehabilitation treatment in the "Intensive Outpatient Program." During his treatment Petitioner had disclosed he began a regular pattern of alcohol use at age thirteen where he drank a twelve pack of beer three times a week. During his treatment program, Petitioner was diagnosed with alcohol dependence and following treatment completion was prescribed an aftercare plan.

f. On 12 January 2002, Petitioner received NJP for UA. He did not appeal his NJP. On 22 March 2002 Petitioner's command issued him a "Page 13" counseling warning (Page 13). The Page 13 documented his failure to follow his prescribed aftercare plan when he mustered for duty with alcohol on his breath. The Page 13 expressly warned him that should he fail to complete all aspects of his aftercare program, or if he was involved in a subsequent substance-related incident, he would be considered for an administrative separation.

g. However, on 18 May 2002, base police apprehended Petitioner at the gate leading into [REDACTED] when they suspected Petitioner was unable to drive given his level of intoxication.

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h. On 22 May 2002 Petitioner's command initiated administrative separation proceedings by reason of alcohol rehabilitation failure. Petitioner waived his rights to consult with counsel, submit a statement on his own behalf, and to General Court-Martial Convening Authority discharge review. The lowest eligible discharge characterization Petitioner could have received was General (Under Honorable Conditions) (GEN). Ultimately, on 25 June 2002, Petitioner was discharged from the Navy with a GEN discharge and assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Misconduct (Alcohol Rehab Failure)."

i. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 1.0. Navy regulations in place at the time of his discharge required a minimum trait average of 2.50 in conduct (proper military behavior), for a fully honorable characterization of service.

j. In short, Petitioner contended that on active duty his depression with alcohol dependency affected his discharge and at the time he was unaware of how such conditions impacted his military service. Petitioner also provided evidence that the VA granted him a service-connection in November 2018 for an unspecified depressive disorder and an unspecified anxiety disorder with alcohol use disorder at an increased 100% rating, up from 30%.

k. As part of the Board 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 dated 11 March 2022. The Ph.D. initially observed:

Petitioner's OMPF did contain evidence of a diagnosis of an Alcohol Use Disorder, for which he received treatment; conversely, the mental health evaluation in December of 2001 did not reveal any other MHC. Evidence submitted by Petitioner supported post-discharge diagnoses of a depressive disorder and an anxiety disorder with alcohol use disorder; however, it did not provide sufficient evidence of markers of a mental health condition during his military service.

The Ph.D. concluded, "[b]ased on the available evidence, it is my considered clinical opinion there is sufficient evidence Petitioner exhibited behaviors associated with an Alcohol Use Disorder during his military service. The preponderance of available objective evidence failed to establish his Alcohol Use Disorder was the result of a MHC at the time of his military service or his in-service misconduct could be mitigated by a MHC.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed alcohol dependency and rehabilitation failure. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy

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concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for an alcohol dependency-related issue and that certain remedial administrative changes are warranted to the DD Form 214. The Board also noted that discharges for alcohol rehabilitation failures are not misconduct-related, and to describe his discharge as misconduct was erroneous and misleading.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an Honorable discharge characterization. The Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. The Board also concluded that although Petitioner has a post-discharge VA service-connection for an anxiety disorder and a depressive disorder, Petitioner's records contemporaneous to his service lacked sufficient evidence to establish a nexus between such mental health conditions/symptoms and his in-service misconduct. As a result, even under the liberal consideration standard the Board concluded that Petitioner's alcohol-related misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. The Board noted that Petitioner's overall active duty trait average in conduct was 1.0 and well below what the Navy required to be considered for a fully Honorable characterization of service. The Board concluded that Petitioner's conduct marks during his active duty career were a direct result of his misconduct and poor performance which further justified his GEN characterization of discharge and RE-4 reentry code.

Additionally, 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 significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that even though flawless service is not required for an honorable discharge, in this case a GEN discharge characterization was appropriate. Moreover, even in light of the Wilkie Memo, 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 only merits a GEN characterization of service and no higher.

The Board also 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

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circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge.

Lastly, and although it did not factor in the Board's ultimate decisions in the case at bar, the Board noted that a fraudulent enlistment occurs when there has been deliberate material misrepresentation, including the omission or concealment of facts which, if known at the time, would have reasonably been expected to preclude, postpone, or otherwise affect a Sailor's eligibility for enlistment. The Board determined that Petitioner had a legal, moral, and ethical obligation to remain truthful on his enlistment paperwork. The Board concluded that had Petitioner properly and fully disclosed his pre-service alcohol abuse beginning at age thirteen, he would have been disqualified from enlisting in the Navy.

RECOMMENDATION:

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

That Petitioner's separation authority be changed to "MILPERSMAN 1910-164," the separation code be changed to "JFF," and the narrative reason for separation should be changed to "Secretarial Authority."

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

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.

5/12/2022

[REDACTED]
Executive Director
[REDACTED]