





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

■  
Docket No: 1708-22  
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) USD Memo of 25 Aug 17 (Kurta Memo)  
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Enlistment Contract of 10 Mar 15  
(3) Reenlistment Contract of 28 Feb 20  
(4) Evaluation Report & Counseling Record of 1 Sep 21  
(5) DD Form 214 of 30 Sep 21  
(6) Advisory Opinion of 25 Apr 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 a change to his reentry code from RE-4 to RE-3.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 1 June 2022. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. 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) and (c). The Board also considered, enclosure (6), an advisory opinion (AO) furnished by a qualified mental health professional 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 and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner enlisted in the Navy and began a period of active duty on 10 March 2015. Petitioner subsequently completed this enlistment with an Honorable characterization of service on 27 February 2020, and immediately reenlisted. See enclosures (2)-(3).

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c. On 27 August 2021 Petitioner received non-judicial punishment (NJP) for failure to obey a lawful order in violation of Article 92, Uniform Code of Military Justice (UCMJ) and wrongful use of a controlled substance in violation of Article 112a, UCMJ. See enclosure (4).

d. On 30 September 2021 Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) with a characterization of service of "Honorable," separation authority was "MILPERSMAN 1910-146," separation code was "HKK," reentry code was "RE-4," and narrative reason for separation was "Misconduct – Drug Abuse." See enclosure (5).

e. Petitioner contends when he was discharged his wife and him were not in a good place in their marriage. Petitioner states for some time his wife dealt with his depression and anger issues, and encouraged him to seek mental health help which he tried it a few different times without much luck. Finally after months of dealing with him, his wife, decided it was best for her and their two daughters to move back to her home state. By the time Petitioner found out, plane tickets had already been purchased, and he begged and pleaded for her to stay, and he told her that he would do anything for them to stay. Out of fear and desperation, he took two of her edible marijuana candies to show her that he would literally do anything to make them stay. A few days later, his wife and their daughters flew back to their home state, and his command had a urinalysis test. Petitioner contends that he did not tell anyone what was going on, and while awaiting for his urinalysis results, he felt guilty for hiding the fact his family left him, however, Petitioner eventually came clean to his chain of command about everything. Petitioner further contends that the urinalysis results came back negative but given his admission of guilt, his chain of command decided it was best to separate him so he could try to save his family and not become a liability to his command. See enclosure (1).

f. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with an AO. The AO stated in pertinent part:

"Among available records, there is no evidence of a mental health diagnosis in military service, although there is evidence of mental health treatment. Substance use is incompatible with military readiness and discipline, and there is no evidence that he was not competent or responsible for his behavior during his military service. His personal statement is not sufficiently detailed to indicate substantive change that would suggest an alternate outcome upon re-enlistment, such as engagement in treatment post-service. Additional records (e.g., medical records describing the Petitioner's diagnosis (or lack there-of), symptoms, and his functioning as related to potential further military service) are required to render an alternate opinion."

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition." See enclosure (6).

#### MAJORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner's application warrants partial relief in the interest clemency.

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Because Petitioner based his claim for relief, in part, upon his mental health condition (MHC), the Board Majority and Minority reviewed his application in accordance with the guidance of reference (b). The Board Majority and Minority found no error or injustice with Petitioner's reentry code, therefore, both the Board Majority and Minority concluded that Petitioner's reentry code was supported by the nature of Petitioner's misconduct.

In accordance with reference (c), the Majority applied liberal consideration to Petitioner's contention that he may have suffered from a MHC while in the Navy which may have incited his misconduct. In this regard, the Majority considered, Petitioner's contentions as abovementioned and concluded as a matter of clemency that some form of relief was warranted under reference (c). Therefore, the Majority voted to change the narrative reason for separation, separation authority, and separation code which would effectively remove any reference to "Misconduct – Drug Abuse" in connection with Petitioner's discharge.

#### MAJORITY RECOMMENDATION

In view of the foregoing, the Majority recommends the following corrective action be taken:

That Petitioner be issued a new DD Form 214 reflecting "Secretarial Authority" narrative reason for his separation, "MILPERSMAN 1910-164" separation authority, and "JFF" separation code.

That no further correction action be taken on Petitioner's naval record.

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

#### MINORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, to include references (b) and (c), the Minority concurred with the Majority that there was no error or injustice in Petitioner's reentry code, however, Petitioner's narrative reason for separation was also supported by the circumstances surrounding Petitioner's separation.

Accordingly, the Minority determined that Petitioner's reentry code and narrative reason for separation, was, and remains, appropriate under the totality of the circumstances.

#### MINORITY RECOMMENDATION

In view of the foregoing, the Board Minority recommends that no corrective action be taken on Petitioner's naval record.

That a copy of this record 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.

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

6/23//2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Petitioner's Request (Grant Relief) — Reentry code - RE-3.

Reviewed and Approved Petitioner's Request (Grant Relief+) — Reentry code - RE-3 and  
Majority Recommendation.

Reviewed and Approved Majority Recommendation (Partial Relief)

Reviewed and Approved Minority Recommendation (Deny Relief)

7/6/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

Signed by: [REDACTED]