



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

[REDACTED]  
Docket No: 1887-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,  
XXX-XX-[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 to make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 25 March 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 determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion

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(AO) furnished by a qualified mental health provider that was originally drafted for Petitioner's first request for relief submitted in August 2020. Petitioner was afforded an opportunity to submit an AO rebuttal, and he did do so in May 2021.

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 originally enlisted in the Navy and began a period of active service on 3 August 1998. On 31 March 2000, Petitioner reported for duty on board the USS [REDACTED] in [REDACTED]. On 8 March 2002, Petitioner reenlisted for a period of five (5) years.

d. On 31 March 2003, Petitioner received non-judicial punishment (NJP) for a failure to obey a lawful order. Petitioner did not appeal his NJP. On the same day Petitioner's command issued him a "Page 13" counseling warning (Page 13) documenting his NJP. The Page 13 expressly warned Petitioner that any further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative separation. Petitioner did not make a Page 13 rebuttal statement.

e. On 6 January 2004, the Navy Drug Laboratory (Drug Lab) in [REDACTED] informed Petitioner's command he tested positive for marijuana at a level of 31 ng/ml. The urine samples tested were received by the Drug Lab on 29 December 2003. On 9 January 2004, Petitioner received NJP for the wrongful use of a controlled substance (marijuana). Petitioner did not appeal his NJP.

f. Unfortunately, on 6 February 2004 the Drug Lab informed Petitioner's command he again tested positive for marijuana, but at a higher metabolite level of 43 ng/ml. The urine samples tested were received by the Drug Lab on 30 January 2004. On 20 February 2004, Petitioner received NJP again for the wrongful use of a controlled substance (marijuana). Petitioner did not appeal his NJP.

g. On 24 February 2004, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to: (1) drug abuse; (2) pattern of misconduct, and (3) commission of a serious offense. Petitioner waived his rights to consult with counsel, submit statements on his own behalf for consideration, and to request an administrative separation board. On 4 March 2004, the Separation Authority approved and directed an under other than honorable (OTH) characterization for misconduct due to drug abuse. Ultimately, on 12 March 2004, Petitioner was discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

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h. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's original contentions and the available records and issued an AO on 28 April 2021. The Ph.D. initially observed that Petitioner's active duty records did not contain evidence of a mental health diagnosis, psychological/behavioral changes indicating a mental health condition, or any occupational dysfunction. The PhD. noted that throughout Petitioner's disciplinary actions, counselings, and administrative processing, there were no concerns noted warranting referral to mental health resources. The Ph.D. concluded by opining that although Petitioner carries a post-discharge PTSD diagnosis, active duty records contemporaneous to Petitioner's service lacked sufficient evidence to establish a nexus with his active duty misconduct. The Petitioner submitted an AO rebuttal on 25 May 2021 that was considered by the Board.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request does not warrant relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) Petitioner served honorably for more than 5 years prior to his discharge and was a model member of the Navy, (b) Petitioner's narrative reason for separation and character of service were in equitable because they failed to take into account or failed to consider his character of service prior to his misconduct, (c) Petitioner's disciplinary infractions were minor and he acknowledged he made mistakes with regards to his substance abuse, (d) Petitioner's offenses should not have been enough to keep him from obtaining an honorable discharge, (e) given the length of time since Petitioner's discharge it is an injustice to continue to characterize and punish him for this discharge, especially considering the circumstances surrounding his OTH, (f) to this day the Petitioner is still living with the consequences of his mistakes, and (g) Petitioner was not given a proper opportunity to mitigate or correct his mistakes/behavior, and instead he was administratively separated. However, given the totality of the circumstances, the Board determined that the request does not merit relief with the exception of making a minor administrative change to Petitioner's DD Form 214.

In accordance with the Hagel, Kurta, and Wilkie Memos, 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, even under the liberal consideration standard, the Board concluded that there was absolutely no nexus whatsoever 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 Petitioner's discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, 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 repetitive drug-related misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly

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reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. 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 not be held accountable for his actions.

The Board also took issue with the proffered argument that Petitioner's wrongful drug use was a minor disciplinary infraction. The Board unequivocally disagreed and concluded that and any such suggestion or argument was entirely without merit and not persuasive. The Board noted that Petitioner's drug use was repetitive in nature and demonstrated a continuing course of misconduct over an extended period of time. The Board concluded that illegal drug use by a Sailor is contrary to Navy core values, makes that Sailor unfit for duty, and poses a risk to the safety of fellow Sailors.

Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that Petitioner's service discrediting drug-related misconduct clearly merited his receipt of an OTH. The Board also carefully considered any matters submitted regarding Petitioner's post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief.

Notwithstanding the discharge upgrade denial, the Board did note, however, that the three NJPs forming the basis of Petitioner's OTH discharge technically occurred during his second enlistment. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his first enlistment was completed without any adverse disciplinary action. The Board was aware that the Department of the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 12 March 2004, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 03AUG1998 TO 07MAR2002."

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Following the correction to the DD-214 for the period ending 12 March 2004, that all other information currently listed on such DD-214 remain the same.

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.

3/29/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]