



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

█  
Docket No: 2132-22

Ref: Signature date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █  
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Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)  
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)  
(d) USD Memo of 25 Aug 17 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures  
(2) Advisory Opinion (AO) of 23 May 22  
(3) Rebuttal to AO of 28 Jun 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 discharge be upgraded to permit medical eligibility. Enclosures (1) – (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 1 July 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, applicable statutes, regulations, and policies, to include references (b) through (e).

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Navy and began a period of active duty on 10 September 1998. On 14 November 1999, there was a fatal aviation mishap aboard his duty ship, and he was required to prepare and store the pilots' bodies in the ship's cold storage to preserve them until they were returned stateside. During preparations for the next deployment, Petitioner absented

himself without leave, on 28 December 2001, and remained absent past the date of the ship's movement, finally terminating his unauthorized absence (UA) by surrender on 30 September 2003, at which time he was placed into pre-trial confinement and subject to routine drug testing. His urinalysis results were positive for marijuana use.

c. On 16 October 2003, Petitioner was notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and drug abuse. He waived his right to consult counsel or request a hearing before an administrative board. That same day, he accepted nonjudicial punishment (NJP) for violations of Article 86 (UA) and Article 112a (wrongful use of marijuana), and his commanding officer forwarded a recommendation for his separation under other than honorable conditions. Petitioner's separation was approved, and he was discharged accordingly on 24 October 2003.

d. Petitioner contends that he was routinely mistreated by his division officer whereas one of the deceased pilots had been one of the few members of the crew who treated him kindly. He states that witnessing the crash and processing the remains was traumatic. He states that the combination of trauma and maltreatment caused him to develop depression, that he began self-medicating with marijuana, and that his UA was encouraged by his mother who feared he would do something he regretted if he remained aboard the ship. He adds that his post-discharge character merits consideration for clemency. In support of his contentions, he provided medical documentation of a civilian diagnosis of post-traumatic stress disorder (PTSD) which describes his symptoms. Additionally, he submitted evidence of his training as an emergency medical technician (EMT), to include specialization in advanced cardiac life support and neonatal transport as well as certifications for emergency management and firefighting. He also submitted a copy of a petition to the State of [REDACTED] signed by 89 individuals in support of permitting him to sit for the exam to qualify as a firefighter for the state and five character letters from his employers attesting to the high quality of care he provides to patients, including those in a critical status, his tireless work ethic, and his leadership in training new EMTs.

e. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested the AO at enclosure (2) for consideration. The AO stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition. Although Petitioner described two UAs in his personal statement, one under 180 days and one more than 180 days, his OMPF only indicated one UA. Mental health treatment records were not provided to support Petitioner's claim. Petitioner attributed his UA to the treatment he experienced by his Division Officer for arriving late to muster. No evidence was presented he was not aware of his misconduct or was not responsible for his behavior. He did not endorse any mental health symptoms on his separation physical and the letter from his provider is nonspecific regarding symptoms and diagnosis. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of PTSD that can be attributed to military service, or that his in-service misconduct could be attributed to PTSD.”

f. In rebuttal, Petitioner provided a witness statement from a fellow crew member substantiating his experience of the traumatic incident during the aviation mishap and describing observed changes in Petitioner’s mood and behavior following it.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants favorable action in the form of the requested relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

The Board noted Petitioner’s misconduct and does not condone it; additionally, although the Board acknowledged that Petitioner experienced trauma during his military service, it concurred with AO regarding the lack of sufficient information to determine that Petitioner suffered from a mental health condition at the time of his in-service misconduct which might have mitigated the severity of his prolonged period of UA and missed movement. However, the Board favorably observed Petitioner’s considerable evidence of post-discharge character and rehabilitation, to include his documented dedication to emergency medical care of critical patients, his volunteerism, and the wide-spread community support for his continued commitment to public service as a firefighter. The Board recognized that, in spite of his traumatic experience during his military service, his period of UA, and his unlawful drug use, Petitioner has chosen to undertake civic duties which continue to expose him to stressful and dangerous situations but which are necessary services for the greater public good. The Board found that the totality of Petitioner’s favorable evidence of post-discharge character outweigh the severity of his in-service misconduct and merit clemency. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner’s characterization of service to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. 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 certain 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 a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, based on his documented misconduct and continued unsuitability for further military service, the Board determined his narrative reason for separation and reentry code remain appropriate.

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

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RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 24 October 2003, his "General (Under Honorable Conditions)" discharge was issued.

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

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 Regulation, 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.

[REDACTED]  
Executive Director  
[REDACTED]