



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

█
Docket No: 2142-22
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, █

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 with enclosures
(2) Advisory Opinion of 5 May 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 naval record be corrected to reflect an “honorable discharge under honorable conditions.”

2. The Board, consisting of █, █, and █, reviewed Petitioner’s allegations of error and injustice on 13 May 2022 and pursuant to its regulations determined 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 considered the advisory opinion (AO) furnished by a 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 Petitioner’s application on its merits.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, [REDACTED]

- c. Petitioner enlisted and entered a period of active duty in the Navy on 25 July 1988.
- d. On 18 May 1989, Petitioner received nonjudicial punishment for three specifications of failure to obey a lawful order and being absent from his appointed place of duty in violation of Articles 92 and 86, Uniform Code of Military Justice (UCMJ).
- e. Petitioner entered a period of unauthorized absence (UA) from 10 July 1989 to 16 August 1989 for a total of 37 days.
- f. Petitioner was admitted to the psychiatry ward at a Naval Hospital, from 18 August 1989 to 20 August 1989, for a psychiatric evaluation. He was diagnosed with various mental health conditions to include Adjustment Disorder with mixed disturbance of emotions and conduct; Passive/Aggressive Personality Disorder; and Dependent Personality Disorder.
- g. The medical officer found Petitioner fit for full duty but unsuitable for further military service due to a long standing Personality Disorder. He recommended that Petitioner be expeditiously processed for administrative separation.
- h. On 13 November 1989, Petitioner was notified of administrative separation processing by reason of misconduct due to commission of a serious offense, UA in excess of 30 days (36 days); three specifications of failure to obey a lawful order; and Convenience of the Government due to Personality Disorder. Petitioner did not exercise his right to consult with counsel and waived an administrative discharge board.
- i. Petitioner was discharged, on 12 December 1989, with an Other Than Honorable characterization of service.
- j. Petitioner provided civilian medical records indicating he was diagnosed with Depression, Anxiety Disorder, and Insomnia post-discharge.
- k. In November 2021, Petitioner was diagnosed by a civilian provider with PTSD, service connected; Major Depressive Disorder, recurrent; and General Anxiety Disorder.
- l. Petitioner contends that he was persistently harassed by a Petty Officer Second Class in his chain of command who also used racial slurs when giving Petitioner orders and threatened to throw him overboard if he reported the harassment. He states he requested to transfer to another Division but that resulted in retaliation, more threats, and false charges. He further states he eventually reported the harassment and that his Division, chain of command, and Petty Officer were all in "cahoots" to have him kicked out of the Navy. He contends a Petty Officer First Class ordered him to throw away top security documents. He also contends he was denied his rights under the UCMJ and punished for not following a lawful order that included racial slurs.
- m. In support of this application, Petitioner provided medical records, and documents pertaining to post-service training, education, and employment.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN, [REDACTED]

n. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO dated 5 May 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder, indicating lifelong characterological features rendering military service unsuitable to him; and an adjustment disorder, indicating difficulty adapting to military service. These diagnoses were based on observed behaviors and performance during his service and psychological evaluation by mental health clinicians. Post-service, a civilian mental health clinician has determined a diagnosis of PTSD that has been attributed to military service. His personal statement is generally consistent with statements made in service. It is possible that behaviors characterized as difficulty adjusting to unsuitable military life were re-conceptualized as PTSD symptoms, as they appear to have continued following military service.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence that the Petitioner was experiencing other mental health conditions (personality disorder and adjustment disorder) during military service. There is evidence that his misconduct may be attributed to PTSD or other mental health conditions (personality disorder and adjustment disorder)."

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in references (b) through (e). Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief and that his characterization of service should reflect General (Under Honorable Conditions).

The Board, applying liberal consideration and relying on the AO, determined that Petitioner suffered from mental health conditions while in-service and that his misconduct was mitigated by the conditions. In particular, the Board noted that Petitioner's in-service mental health conditions were well documented in his service record and the detailed records described his behavior and provided a nexus between Petitioner's conditions and misconduct. Furthermore, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason, separation code, and separation authority should be changed to "Secretarial Authority."

Although the Board understood Petitioner was requesting an upgrade to his characterization of service, the Board noted the verbiage he used, "honorable discharge under honorable conditions," could be interpreted as Honorable or General (Under Honorable Conditions). The Board interpreted the request as a request to upgrade his characterization of service to general (under honorable conditions). Additionally, based on the length of Petitioner's period of UA, the Board found a General (Under Honorable Conditions) characterization of service to be supported by the preponderance of the evidence. The Board determined that an Honorable discharge was

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],
USN. [REDACTED]

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 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.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new DD Form 214 indicating the characterization of service as "General (Under Honorable Conditions)," narrative reason for separation as "Secretarial Authority," separation authority as "MILPERSMAN 1910-164," and separation code as "JFF." Petitioner's reenlistment code shall 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 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.

6/14/2022

[REDACTED]