



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

██████████
Docket No: 2285-22

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 w/ enclosures
(2) Advisory Opinion (AO) of 24 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 her narrative reason for separation and separation code be changed to a basis that does not require her to repeatedly explain her mental health in relation to her discharge documents. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, and ██████████, 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 24 September 2003. On 21 May 2004, he received nonjudicial punishment (NJP) for Article 134, drunkenness, and a second NJP for Article 86, unauthorized absence (UA), on 16 July 2004.

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c. Almost a year later, on 7 June 2005, Petitioner was notified of administrative separation by reason of convenience of the government due to personality disorder (PD); he did not elect to submit a statement. His mental status evaluation of 27 July 2005 advised that he posed a threat of harm to himself and was potentially dangerous to others, but that he was mentally responsible for his actions. He was diagnosed with an Adjustment Disorder (AD) with mixed disturbance of emotions and conduct and found to meet the criteria for expeditious separation. In approving his separation “under general conditions,” Commander, Naval Surface Group Middle Pacific, noted his commanding officer’s observation that Petitioner exhibited behavior contrary to core values. Petitioner was discharged, on 2 September 2005, with a General (Under Honorable Conditions) characterization with “Personality Disorder” as his narrative reason for separation.

d. Petitioner previously applied to the Naval Discharge Review Board (NDRB) in 2008 but made no specific contentions. After the Department of Veterans Affairs (VA) granted him benefits for a service-connected disability of recurrent, moderate Major Depressive Disorder (MDD), he reapplied to the NDRB in 2018 contending that his discharge was unjust because it was due to a service-connected disability. On both occasions, the NDRB determined his discharge was proper as issued.

e. Petitioner again contends to the Board that service-connected mental health issues contributed to his discharge and warrant an upgrade – of note, Petitioner does not elaborate upon the nature of the upgrade requested. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board reviewed enclosure (2). The AO states in pertinent part:

Petitioner’s OMPF did contain evidence of a diagnosis of a mental health condition (Adjustment Disorder with mixed disturbance of emotions and conduct). The Petitioner has provided no pre or post service mental health records in support of his claim and to provide clarifying information (i.e., symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Similarly, his application was not sufficiently detailed to establish a nexus with his misconduct. Adjustment disorders typically resolve after separation from service and there is insufficient evidence to attribute the Major Depressive Disorder to the Adjustment Disorder. Additional records (e.g., pre and/or post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific self-medication role) would aid in rendering an alternate opinion.

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

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 partial relief. The Board reviewed

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the application under the guidance provided in references (b) through (e) intended to be covered by this policy.

The Board concurred with the AO regarding Petitioner's contended mental health condition lacking a nexus to his misconduct and considered the available evidence insufficient to find that a mental health condition mitigated the misconduct which resulted in Petitioner's discharge under honorable conditions. The Board noted that Petitioner did not provide any additional evidence for consideration. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and weighed it against the relative brevity of his active duty service. As a result, the Board concluded significant negative aspects of his service outweighed the positive aspects and continue to warrant a General (Under Honorable Conditions) characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's characterization of service or granting clemency in the form of an upgraded characterization of service.

However, the Board observed that Petitioner's narrative reason for separation, separation authority, and separation code disclose his private mental health information and merit correction on that basis alone. Accordingly, the Board determined that it is in the interest of justice to grant relief with respect to correcting Petitioner's discharge to remove reference to his mental health.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 2 September 2005, his "General (Under Honorable Conditions)" discharge was issued for the narrative reason of "Secretarial Authority" under the authority of "MILPERSMAN 1910-164" with a separation code of "JFF."

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/15/2022

[REDACTED]

Executive Director

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