



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

[REDACTED]
Docket No: 2503-22

Ref: Signature date

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

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

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 25 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 discharge be upgraded to either "Honorable" or "General (Under Honorable Conditions). Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 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 15 May 2001. He later extended his initial enlistment for an additional 12 months with an end of active obligated service date of 14 May 2006. He served without incident for approximately 4 1/2 years. Approximately 4 months into his deployment to Operation Iraqi Freedom (OIF), he learned his spouse was having an extramarital affair and experienced suicidal ideations while cleaning his weapon; he sought mental health care on 18 November 2005.

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c. After a provisional diagnosis of Major Depressive Disorder requiring differentiation from Depressive Disorder, not otherwise specified due to partner relational problems, Petitioner was prescribed several mental health medications, placed under an escort/buddy watch, and restricted from weapons access. He continued to receive routine mental health care for the remainder of the deployment, with some improvement attributed to continued medication.

d. Petitioner's mental health notes reflect his decision on 10 January 2006 not to reenlist, and he expressed an expectation that he would begin separation leave around 6 March 2006. After returning from deployment, on 6 February 2006, Petitioner submitted a request to be removed from the watchbill 30 days prior to his expected separation leave date of 6 March 2006; however, during his pre-separation brief on 6 March 2006, he was issued separation travel orders for release from active duty with a 22 March 2006 detachment date and began his checkout process.

e. The following Monday, Petitioner was part of a routine command urinalysis for which the Naval Drug Lab reported positive results on 17 March 2006. He was notified on 20 March 2006 of administrative separation processing for misconduct due to drug abuse; he waived consultation with counsel and his right to a hearing before an administrative separation board. He subsequently accepted nonjudicial punishment (NJP) for a single violation of Article 112a for wrongful use and/or possession of a controlled substance. Commanding Officer, [REDACTED], approved the recommendation of Petitioner's commanding officer for separation under Other Than Honorable (OTH) conditions, and he was discharged, on 12 April 2006, with a final trait average of 3.65 over his 4 years, 10 months, and 26 days of service.

f. Petitioner contends he was receiving mental health services and suffered from undiagnosed post-traumatic stress disorder (PTSD) during his final deployment and prior to beginning his separation leave. He asserts that he otherwise served honorably for the entirety of his military service with the exception of a single instance of marijuana use prior to his deployment, which occurred while he was at a party immediately prior to his separation leave, although he describes that he had already completed his checkout process and had his separation orders, but was surprised to be called back to the base for a urinalysis after having checked out with the urinalysis coordinator. He acknowledges that he used marijuana but reiterates that it was the only time he did anything wrong in over 5 years of service and believes his discharge under other than honorable conditions was inequitable in the context of his offense and his overall record of service. In addition to his rating decision and character of discharge determination from the VA, Petitioner provides his service health records, additional records of service accolades, evidence post-discharge certifications and education, and 10 character letters in support of his contentions.

g. 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 contain evidence of his in-service diagnosis of a partner relational problem for which he received treatment. Petitioner provided documentation of his post-service diagnosis of PTSD and VA service-connection. He also provided alternative reasoning for his misconduct (i.e., checked out of his unit and on terminal leave).

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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 insufficient evidence that his misconduct may be attributed to PTSD.”

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 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, the Board concurred with the AO regarding the lack of nexus between Petitioner’s misconduct and his VA diagnosis of service-connected PTSD with respect to mitigation. Likewise, the Board noted the VA’s character of discharge determination for purposes of veteran’s benefits applies a different standard of review and is not binding upon the Board with respect to this review. However, the Board observed Petitioner’s otherwise excellent record of honorable service over almost the entirety of his extended active duty commitment, completing nearly 5 years and 11 months of active service with an overall trait average of 3.65, as well as the nature and unique timing of his single instance of misconduct in using marijuana during the course of his pre-separation checkout process. After thorough consideration of Petitioner’s in-service and post-discharge evidence, the Board found that his discharge under OTH conditions was inequitable in retrospect of the totality of his favorable clemency matters. 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. Additionally, the Board found no evidence that Petitioner was not responsible for his misconduct. As a result, they concluded his narrative reason for separation, separation code, and reentry code remain appropriate in light of his unsuitability for further naval service.

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 12 April 2006, his “General (Under Honorable Conditions)” discharge was issued.

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

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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.

7/20/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]