



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

█
Docket No: 2523-22

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, "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 receive a copy of his DD Form 214 from first Navy discharge.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 19 August 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

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

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 (AO) furnished by a qualified mental health provider. Although Petitioner was afforded an opportunity to submit an AO rebuttal, he did not do so.

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, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner originally enlisted in the Navy and began a period of active service on 26 October 1998. Petitioner's pre-enlistment physical, on 9 July 1998, and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. On 10 March 1999, Petitioner was disenrolled from hospital corpsman school due to a lack of comprehension/retention of the subject matter. On 21 June 1999, Petitioner reported for duty on board the [REDACTED] in [REDACTED], [REDACTED]. On 4 November 2002, Petitioner reenlisted for four (4) years.

e. On 11 December 2002, Petitioner received non-judicial punishment (NJP) for the wrongful appropriation of a government credit card and obtaining services under false pretenses. He did not appeal his NJP.

f. Petitioner was subsequently notified he was being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. In the interim, on 7 January 2003, Petitioner's separation physical did not note any neurologic or psychiatric conditions or symptoms. Ultimately, on 17 January 2003, the Petitioner was discharged from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) characterization of service and assigned a RE-4 reenlistment code.

g. In short, Petitioner contended that he was dealing with undiagnosed PTSD while on active duty.

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 22 June 2022. The Ph.D. stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. He did not provide any medical/mental health documentation in support of his contention. Petitioner did not provide clarifying information

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

about the trauma related to his PTSD or information about his MHC (i.e., when the trauma occurred, diagnosis of MHC, 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. Additional records (e.g., post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant a relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to his sole contention that he suffered from undiagnosed PTSD on active duty. Given the totality of the circumstances, the Board determined Petitioner's request for a discharge upgrade does not merit relief. However, the Board concluded some administrative changes to Petitioner's DD Form 214 are warranted.

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, the Board concluded that there was no convincing evidence Petitioner suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board observed that Petitioner did not submit any clinical documentation or treatment records to support his mental health claims despite a request from BCNR on 7 April 2022 to specifically provide additional documentary material. 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly 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.

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

The Board did not find a material error or injustice with the Petitioner's GEN characterization of service and was not willing to grant a full upgrade to an honorable discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board determined that characterization under OTH conditions or GEN is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating veterans benefits, or enhancing educational or employment opportunities. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances, that the Petitioner merits a GEN characterization of service and no higher.

The Board did note, however, that the misconduct forming the basis of Petitioner's GEN discharge technically occurred during his last enlistment. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his previous enlistments were completed without any significant 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.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's narrative reason for separation, separation authority, separation code, or reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation authority, separation code, and reentry code based on the totality of his circumstances, and that such narrative reason for separation, separation authority, separation code, and reentry code were proper and in compliance with all Department of the Navy directives and policy at the time of his original discharge. Accordingly, the Board did not find evidence of an error or injustice that warrants changing Petitioner's narrative reason for separation, separation authority, separation code, and reentry code or granting clemency in his case.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material errors 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 17 January 2003, to reflect the following changes to Petitioner's DD Form 214:

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

Block 18 of Petitioner's DD Form 214 shall include the following remark: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 26 OCTOBER 1998 TO 03 NOVEMBER 2002."

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.

8/23/2022

[REDACTED]