



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

█
Docket No: 2856-22

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 make other conforming changes to his DD Form 214.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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 from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided 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 enlisted in the Navy and began a period of active service on 15 December 1994. Petitioner's pre-enlistment physical, on 7 December 1994, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Petitioner expressly answered "no" on his medical history to ever having "depression or excessive anxiety," or "nervous trouble of any sort."

d. On 21 May 1996, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA). Petitioner did not appeal his NJP. On 11 December 1996, Petitioner received NJP for the wrongful use of marijuana. Petitioner did not appeal his NJP.

e. Petitioner was subsequently notified of administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his right to an administrative separation board. Ultimately, on 30 January 1997, the Petitioner was discharged from the Navy for misconduct due to drug abuse with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reenlistment code.

f. On 22 July 2003, the Naval Discharge Review Board (NDRB) denied Petitioner's application for relief. On 5 December 2007, this Board denied Petitioner's initial petition for relief.

g. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 1.0. Navy regulations in place at the time of his discharge required a minimum trait average of 2.0 in conduct (proper military behavior), for a fully honorable characterization of service.

h. In short, Petitioner contended at the time he enlisted he had come from an abusive household and was suffering from the effects of anxiety, PTSD, depression, and insomnia. He stated that he did not mention such mental health concerns to either his recruiter, or his chain of command, and instead he self-medicated with drugs and alcohol to cope with his mental health issues. Petitioner argued, in part, that his mental health issues were a causative factor for the behavior underlying his OTH discharge and that the Board must view his mental health

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conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service.

i. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 27 June 2022. The Ph.D. stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service; however, there is evidence of prior service marijuana use, which appears to have continued during military service. While there is evidence he received post-service treatment for a MHC, his personal statement and letters of support lack sufficient detail to establish a relationship to his military service or nexus with his misconduct. Additional records (e.g., 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, "Based 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/behavior 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.

In accordance with the Kurta, Hagel, 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 concurred with the AO and concluded that there was no nexus between any mental health conditions and/or related symptoms and his misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. The Board also concluded that although Petitioner has post-discharge mental health diagnoses, active duty records contemporaneous to his service lacked sufficient evidence to establish a nexus between his mental health conditions/symptoms and his in-service misconduct. As a result, even under the liberal consideration standard the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms.

However, the Board carefully considered any matters submitted regarding Petitioner's character, post-service conduct, and personal/professional accomplishments. The Board specifically noted Petitioner's current PTSD challenges, his continuing sobriety and ongoing treatment, and his admirable work at the [REDACTED] therapeutic community where he plays an active role in helping other people with mental health and addiction problems. Accordingly, in keeping with the letter and spirit of the Wilkie Memo, and while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded that no useful purpose is served by continuing to

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characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN), strictly on clemency grounds, is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board 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 even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions on active duty. Lastly, even in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a GEN characterization of service and no higher.

The Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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

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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.

8/16/2022

