



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

[REDACTED]
Docket No: 3077-22

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 28 Jun 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 "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 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, applicable statutes, regulations, and policies, to include the references.

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. Petitioner enlisted in the Navy and began a period of active duty on 31 July 2001. From the period 2 May 2002 through 21 May 2002, he absented himself without leave and, following his return, was subject to a routine urinalysis which yielded a positive result of marijuana metabolites. He received nonjudicial punishment (NJP) on 27 June 2002 for violations of Article 86, unauthorized absence of 18 days, and Article 112a, wrongful use of the controlled substance marijuana. The same days as his NJP, he was notified of administrative separation processing

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USN, XXX-XX-[REDACTED]

for misconduct due to drug abuse; he elected to waive all applicable rights and declined substance abuse treatment. Commanding Officer, Naval Air Technical Training Center, forwarded a recommendation for separation under Other Than Honorable (OTH) conditions, which was approved by Chief of Naval Education and Training. Petitioner was discharged on 12 July 2002 with an OTH.

c. Petitioner applied to the Naval Discharge Review Board (NDRB) but was denied on 2 December 2010. The NDRB determined his discharge was proper as issued.

d. Petitioner contends that his discharge is unjust because he suffered pre-existing mental health issues which were exacerbated during his military service. Specifically, he describes that he had an extremely difficult childhood during which suffered significant abuse, abandonment, and homelessness as a result of the various adults responsible for his care. At the time of his misconduct, he states that he was mentally struggling with abandonment issues because his then-girlfriend, who was one of the only stable and consistent relationships in his life, was threatening to leave him, so he did whatever he could to maintain one of the only stable relationships in his life. In retrospect, he regrets his actions and acknowledges that, instead of dealing with his problems like an adult or seeking additional help from his chain of command, he ran away. He admits that he smoked marijuana during his absence and should not have done so, but requests that the Board consider his post-discharge character and evidence of rehabilitation as well as the mitigating circumstances underlying the reason for his misconduct.

e. In support of his contentions of post-discharge character, Petitioner submitted documentation of his education, employment history, letters of recommendation for employment and for academic scholarships, volunteerism, community service, a criminal background check, and a character letter attesting to the progress he has made in becoming a responsible person and father in spite of his difficult childhood and discharge. Specifically, he included his scholarship award and a letter of recommendation support his award of the scholarship, Dean's List certificates, transcripts and his degree for a bachelor of science in Aeronautics, a pilot's license certification, a license from the Federal Communication Commission to operate aviation communication equipment, a letter of appreciation for volunteering his services as a pilot for a community event, a character letter attesting to his volunteer service as an emergency first responder and in assisting with their charitable events, eight letters of recommendation supporting Petitioner's efforts in pursuit of a career in aviation, and a letter from a retired police officer and certified private investigator confirming his clear criminal record.

f. Because Petitioner contended mental health issues affected the circumstances of his discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, he was diagnosed with a substance use disorder and declined treatment for the condition. Substance use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his behavior. He has provided no post-service medical evidence of another mental health condition. His personal statement is not sufficiently detailed to establish clinical symptoms of a mental health condition or a nexus with his misconduct. Additional records (e.g., mental health

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USN, XXX-XX-[REDACTED]

records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) 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 mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.

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 the requested relief. The Board reviewed his application under the guidance provided in the references (b) through (e) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; additionally, the Board concurred with the AO that the available evidence is insufficient to establish that Petitioner's misconduct was attributable to a mental health condition. However, the Board considered the totality of clemency factors in his favor, to include that his misconduct amounted to youthful indiscretion and poor decision-making during a period of stress from which his evidence of post-discharge character reflects substantial efforts toward his successful rehabilitation. The Board specifically took into account Petitioner's volunteerism, his contributions as a first responder, and his pursuit of an aviation career that requires abstinence from controlled substances, further reflecting that his in-service drug abuse was atypical and driven by circumstance rather than indicative of a pervasive character flaw. As a result, the Board found that the totality of favorable matters in support of clemency outweighed the misconduct which resulted in Petitioner's OTH discharge. Accordingly, the Board determined that it is in the interest of justice to grant a change to Petitioner's narrative reason for separation in addition to upgrading his 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. Similarly, the Board determined Petitioner's reenlistment code should remain unchanged. The Board concluded that the recommended relief was sufficient clemency to address any issues of injustice in Petitioner's record. Based on his record of misconduct, the Board found that he remains unsuitable for further military service.

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

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RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating for the period ending 12 July 2002, his "General (Under Honorable Conditions)" discharge was issued for the narrative reason of "Secretarial Authority."

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

9/7/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]