



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

█
Docket No: 3383-22

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, XXX-XX-█

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 PTSD," of 3 September 2014
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (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) USD 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

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 his discharge be upgraded to an Honorable characterization of service and his suffix be corrected to reflect "II" on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 September 2022, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered an advisory opinion (AO) from a qualified medical professional dated 14 July 2022. Although provided with an opportunity to submit a rebuttal to the AO, Petitioner chose not to do so.

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

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. Petitioner enlisted in the U.S. Navy and began a period of active duty on 22 February 1994. During the period from 29 August 1994 to 18 May 1996, he received nonjudicial punishment (NJP) on four occasions for three periods of unauthorized absence (UA), two specifications of failure to obey a lawful order, carrying a concealed weapon, and misbehavior of a sentinel or lookout. Subsequently, administrative discharge action was initiated by reason of misconduct. Petitioner was advised of his rights and, after waiving his procedural rights, his commanding officer recommended he be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct. Subsequently, Petitioner received NJP for the fifth time after failing to obey a lawful order and using provoking words. On 19 July 1996, Petitioner was discharged with an OTH for his misconduct. Upon his discharge, he was issued a DD Form 214 that reflects the suffix "III" vice "II" as part of his name.

d. Petitioner asserts he incurred mental health concerns following a Traumatic Brain Injury (TBI) during military service. In addition, he contends: (1) "I was a good Sailor to whom bad things happened," (2) "there were a number of incidents in my history that all seemed to escalate/build on previous incident(s)," (3) "my run of bad luck started when I was abused by an E-6 that resulted in a trip to sick bay for treatment after my head struck a steel door aboard the ship," (4) "after that, the E-6 was discharged from the service and my career was set on a collision course," (5) "there were a number of incidents that left me feeling like it was me against the world and I feel that my CO was determined to make an example of me," (6) "my family was alone in [REDACTED] following the [REDACTED] bombing and there was fear everywhere," (7) "I was in the middle of the ocean unable to help my family," (8) "my XO recommended that I either be removed from the boiler room or from the ship and/or [attend] anger management classes and this was denied by my CO," (9) "I [felt] I was unfairly treated, despite making mistakes that I alone am responsible for, and this treatment is what eventually led to my eventual separation under other than honorable conditions," (10) "I feel that his punishment did not fit the crime; it's as if I got a speeding ticket but was sentenced to 15 years in prison," (11) "the stigma continues to follow me," and (12) "I can't apply for service-connected VA benefits as a result of minor infractions for which I was discharged." As such, he would like his characterization of service upgraded to an honorable (HON) discharge.

e. Petitioner further contends his suffix is incorrectly documented on his DD 214 as [REDACTED] [REDACTED] and he wants it corrected to reflect [REDACTED]. Petitioner's record documents the proper suffix is "II."

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

f. For purposes of clemency consideration, Petitioner provided advocacy letters but no supporting documentation describing post-service accomplishments.

g. In connection with Petitioner's assertion that he incurred mental health concerns following a TBI during military service which might have mitigated the circumstances that led to his discharge characterization of service, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health professional who reviewed the Petitioner's request for correction to his record and provided the Board with an Advisory Opinion (AO). The AO stated in pertinent part:

There is no evidence in the Petitioner's available medical records that he sustained a TBI during military service. His statement is not sufficiently detailed to establish symptoms of a TBI or a nexus with his misconduct. He has provided no post-service medical evidence in support of his claims. There is no evidence he was unaware of his misconduct or not responsible for his behavior, and two of his NJPs occurred prior to the [REDACTED] bombing. Additional records (e.g., medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a TBI or a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a TBI or a mental health condition."

h. Petitioner was previously denied relief by this Board on 19 August 2016.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his suffix be corrected to reflect "II," the Board noted there is an error to his suffix on his DD Form 214 that requires correction.

However, with regard to Petitioner's request that his discharge be upgraded to Honorable, the Board determined that relief is not supported by the evidence. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, Petitioner's desire for a discharge upgrade and his aforementioned contentions. 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 multiple NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect Petitioner's conduct had on the good order and discipline of his command. Finally, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to a TBI or a mental health condition. As a result, the Board concluded

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

Petitioner's conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commended Petitioner's post-discharge good conduct, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service or granting clemency in the form of an upgraded characterization of service.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

A Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) be issued to Petitioner correcting his suffix to "II" and reflecting his name as [REDACTED]
[REDACTED]

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.

9/28/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]