



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

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Docket No: 3490-22

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,
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Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 1 Jul 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 for an upgrade of his characterization of service. Enclosures (2) and (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 24 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 references (b) through (d).

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 regulation 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 entered active duty with the Navy in March 1986. During the period the period from 17 October 1986 to 17 December 1986, Petitioner received five administrative counselings concerning deficiencies in his performance and conduct.

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[REDACTED]

d. On 29 December 1986, Petitioner received non-judicial punishment (NJP) for provoking speech, drunk and disorderly conduct, and two specifications of failure to obey a lawful order.

e. On 10 February 1987, Petitioner issued an administrative counseling concerning his poor appearance, performance in training and liberty conduct. On 18 February 1987, Petitioner submitted a sworn statement concerning allegations against him and stated he has "consistently asked for help with his drinking problems but have always been turned down."

f. On 20 February 1987, Petitioner received his second NJP for failure to obey a lawful order, resisting apprehension, assault, drunk and disorderly conduct, and two specifications of communicating a threat.

g. On 18 March 1987, Petitioner evaluated and diagnosed with alcohol use disorder and borderline personality disorder with dependent and antisocial features.

h. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. Petitioner was advised of, and elected his procedural rights to consult with military counsel, and to present his case to an administrative discharge board (ADB). On 27 March 1987, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that Petitioner be separated from the Navy with an Other Than Honorable (OTH) characterization of service

i. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an OTH characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 8 June 1987, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct due to commission of a serious offense.

j. On 27 February 1995, the Naval Discharge Review Board (NDRB) reviewed Petitioner's request for an upgrade of his discharge characterization and determined his discharge was properly issued.

k. Petitioner contends that he was experiencing post-traumatic stress disorder (PTSD) from a parachute accident during his prior service in the Army, which contributed to his misconduct during his naval service. Additionally, Petitioner contends that he joined the Navy in hoping to learn new skills but did not understand to what extent that the accident affected him. He further argued that his behavior during his naval service was uncharacteristic.

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

m. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

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During military service, he was diagnosed with a personality disorder and an alcohol use disorder and deemed responsible for his actions. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Post service, the VA has determined service connection for PTSD from an Army parachute accident prior to his Navy service. Service records indicate that the Petitioner's alcohol use disorder predated his military service, but it is possible that unrecognized symptoms of PTSD could have exacerbated alcohol use. Given his history of problematic alcohol consumption prior to military service, it is difficult to attribute his misconduct to a mental health condition other than alcohol use disorder. Additional records (e.g., complete VA mental health records, including the Compensation and Pension (C&P) exam, 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's OTH discharge for separation by reason of misconduct due to commission of a serious offense. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (d).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD condition, and the effect that it may have had upon his misconduct. In this regard, the Board substantially concurred with the AO that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct in accordance with references (b) and (c), the Board also noted Petitioner's submission of supporting documentation and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (d). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. Based upon this review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his mental health condition outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

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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 outweighed the positive aspects of his military record even under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

Although not specifically requested by the Petitioner, the Board also determined that Petitioner's narrative reason for separation, reenlistment code, separation code, and separation authority should be changed in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that, for the period ending 8 June 1987, his character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the reenlistment code was "RE-1J," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

9/11/2022

[REDACTED]