



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

[REDACTED]
Docket No: 3878-22

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],
[REDACTED]

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 [REDACTED], reviewed Petitioner's allegations of error and injustice on 29 July 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.

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, it is in the interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the Navy and began a period of active service on 2 January 1996. Petitioner's pre-enlistment physical examination, on 25 October 1995, and self-reported medical history noted no psychiatric or neurologic conditions of symptoms. Petitioner's submarine duty physical examination, on 23 January 1996, and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms.

d. On 5 December 2000, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA). Petitioner did not appeal his NJP.

e. On 25 January 2003, Petitioner reenlisted for a period of two years. Petitioner's corresponding retention medical examination, on 18 January 2003, noted no neurologic or psychiatric abnormalities.

f. On 6 June 2003, Petitioner completed a post-deployment health assessment (PDHA) following his deployment onboard the [REDACTED] to the Persian Gulf area of responsibility (AOR). Petitioner departed the AOR on 26 May 2003 after approximately ninety-four (94) days in theater. The PDHA endorsed no neurologic or psychiatric issues, conditions, or symptoms.

g. On 6 November 2003, Petitioner received NJP for the wrongful use of marijuana. Petitioner did not appeal his NJP.

h. Following his NJP, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to drug abuse. Ultimately, on 15 January 2004, Petitioner was administratively discharged from the Navy for misconduct with an Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

i. On 10 April 2020, the Department of Veterans Affairs (VA) determined that Petitioner's service was honorable for VA purposes and that he was entitled to health care benefits for any service-connected disabilities.

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j. 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 7 July 2022. The Ph.D. stated in pertinent part:

Although there is no evidence Petitioner was diagnosed with a mental health condition or reported any mental health symptoms during his military service, there is no contradictory evidence in the available limited records to post-service psychological assessments/evaluations. Post-service, the Petitioner has been diagnosed with PTSD and other MHC (anxiety, depression), which have been linked to his military service. While substance use is a typical maladaptive coping skill person's resort to when experiencing stress and mental health symptoms, there is no evidence Petitioner was unaware of his misconduct or not responsible for his behavior.

The Ph.D. concluded, "[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD and another MHC (i.e., anxiety, depression) that may be attributed to military service. There is post-service evidence that his misconduct may 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 does not warrant relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) Petitioner's mental health conditions were a major contributing factor to the misconduct, (b) the impact of trauma led to excessive drinking and outright depression, following by marijuana use, (c) but for the effects of traumatic episodes happening on active duty Petitioner was an upstanding Sailor, (d) Petitioner's PTSD excuses and mitigates his discharge, (e) Petitioner meets the standards for an Honorable discharge, (f) the traumatic events did not stop Petitioner from continuing to serve his country to the fullest, and (g) Petitioner's mental health condition outweighs the misconduct. For purposes of clemency consideration, the Board noted Petitioner provided advocacy letters but no supporting documentation describing post-service accomplishments.

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, even under the liberal consideration standard and notwithstanding the AO, the Board concluded that there was absolutely no nexus whatsoever between any mental health conditions and/or related symptoms and Petitioner's 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 Petitioner's discharge. As a result, the Board concluded that Petitioner's

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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 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.

Additionally, the Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under OTH conditions 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board concluded that illegal drug use by a Sailor is contrary to Navy core values, renders that Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow Sailors.

Further, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. The Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy (DoN) and have no bearing on previous active duty service discharge characterizations. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that Petitioner's drug-related misconduct clearly merited his receipt of an OTH and a narrative reason for separation documenting of misconduct. The Board also carefully considered any matters submitted regarding Petitioner's character, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief, and that such discharge was in accordance with all DoN directives and policy at the time of his discharge.

Notwithstanding the discharge upgrade denial, the Board did note, however, that the misconduct forming the basis of Petitioner's OTH discharge technically occurred during his last enlistment period. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his previous enlistment was 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

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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.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error 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 15 January 2004, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 02JAN1996 TO 24JAN2003."

Following the correction to the DD-214 for the period ending 15 January 2004, that all other information currently listed on such DD-214 remain the same.

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.

8/2/2022

[REDACTED]