



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

█
Docket No: 3963-22

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 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 change his narrative reason for separation following his involuntary discharge for a personality disorder.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 17 October 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

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clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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 enlisted in the United States Navy and began a period of active service on 20 December 1995. Petitioner's pre-enlistment physical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. On 9 January 1998, Petitioner received non-judicial punishment (NJP) for a two-day period of unauthorized absence and two specifications of communicating a threat. Petitioner received the maximum punishment permitted at NJP. Petitioner did not appeal his NJP.

e. On 12 January 1998, Petitioner received an Administrative Counseling (Page 13) addressing the deficiencies in his performance and conduct, and advising him that further deficiencies may result in disciplinary action or administrative separation.

f. On 1 June 1998, Petitioner was treated by a clinical psychologist and diagnosed with an adjustment disorder with depressed mood and personality disorder (severe). Petitioner was judged to represent a continuing danger to himself and others if retained in the naval service and was recommended for separation.

g. On 3 June 1998, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to commission of a serious offense and convenience of the government on the basis of a diagnosed personality disorder. Petitioner waived his rights to consult with counsel and submit a statement on his own behalf. On 5 August 1998, Petitioner was discharged from the Navy with a General (Under Honorable Conditions) (GEN) discharge and assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Personality Disorder" with a separation code of "HFX."

h. On 14 April 2013, the Naval Discharge Review Board (NDRB) denied Petitioner's application for relief. Petitioner contended that his misconduct was a result of not being able to work in his rate and that his post-service achievements were worthy of an upgrade. The NDRB determined that Petitioner's discharge was proper as issued and that no change was warranted.

i. In Petitioner contends that he excelled at every duty station until his girlfriend terminated their pregnancy without any discussion and without Petitioner's knowledge. He found himself in a dark place and fell into a deep depression. He suffered from severe anxiety and had trouble concentrating, sleeping, and eating. It was during this time when he had two back-to-back verbal

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altercations. Petitioner takes full responsibility for his actions, but explains that this conduct was out of character. He believes that his mental health condition was the cause of these incidents.

j. As part of the Board's review process, a qualified mental health professional reviewed Petitioner's contentions and the available records and issued an AO dated 10 August 2022. The AO noted in pertinent part:

Petitioner was appropriately referred and properly evaluated for psychological evaluation during his enlistment. His mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation. Post-service, he has provided evidence of diagnoses of PTSD and Adjustment Disorder that have been attributed to experiences during military service. However, there is insufficient information in his personal statement and available records to attribute his misconduct to a mental health condition. Although avoidance and aggression can indicate symptoms of PTSD, it is difficult to attribute his misconduct to symptoms of PTSD, as his descriptions of his personal stressors appear unrelated to his threatening statements. Additional records (e.g., post-service mental health 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 considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is in-service evidence of a mental health condition that may be attributed to military service (Adjustment disorder). There is insufficient evidence his misconduct could be attributed to PTSD or a mental health condition, other than a personality disorder."

k. Petitioner provided a response to the AO explaining that the two incidents of misconduct occurred shortly after he found out about the abortion. He was in a dark place and mentally cracked. He highlights that he served at his prior duty stations without incident.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. The Board reviewed his application under the guidance provided in the Hagel, Kurta, and Wilkie Memos.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board was not willing to grant

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an Honorable discharge characterization. The Board gave liberal and special consideration to Petitioner's record of service, and his contentions about how the traumatic loss of his unborn child had an adverse impact on his service. However, in making this finding, the Board concurred with the AO that there is insufficient evidence that the misconduct could be attributed to PTSD or another mental health condition, other than a personality disorder. Further, the Board determined that there was insufficient evidence to support the argument that a personality disorder mitigated the misconduct that formed the basis of Petitioner's discharge. Even under the liberal consideration standard, the Board concluded that while the Petitioner's misconduct may have been triggered by stress, it was not due to a mental health-related condition. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards. The Board determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions. Accordingly, a GEN discharge characterization remains appropriate in this case. Similarly, the Board also concluded a change to Petitioner's reentry code was not supported by the evidence in light of his record of misconduct and unsuitability for future military service.

RECOMMENDATION:

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

That Petitioner's separation authority be changed to "MILPERSMAN 1910-164," the separation code be changed to "JFF," and the narrative reason for separation should be changed to "Secretarial Authority."

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.

10/27/2022

[REDACTED]

Executive Director
Signed by: [REDACTED]