



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

[REDACTED]
Docket No: 4208-22

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: [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 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
(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
(f) BUPERSINST 1900.8 dtd 28 Jun 1993

Encl: (1) DD Form 149 w/attachments
(2) Case summary
(3) Advisory opinion of 15 August 2022

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 by upgrading his discharge characterization to Honorable. See enclosure (2).

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 September 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, and references (b) through (f), which 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 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by

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Veterans claiming PTSD or traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered enclosure (3), the 15 August 2022 advisory opinion (AO) furnished by a qualified mental health provider. Petitioner was provided an opportunity to comment on the AO but chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. The Petitioner enlisted in the Navy and completed a period of honorable service from 21 June 1993 to 20 June 1995. Petitioner reenlisted and commenced another period of active duty on 25 August 1997. On 10 July 2001, Petitioner reenlisted for a period of 4 years. Petitioner subsequently went into a period of unauthorized absence (UA) from 14 July 2003 to 28 March 2006, totaling 988 days.

c. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Marine Corps on 2 May 2006 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "In Lieu of Trial by Court-Martial," his separation code is "KFS," and his reenlistment code is "RE-4."

d. Petitioner's record contains an administrative error. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) does not include his period of honorable service from 25 August 1997 to 10 July 2001. Per Reference (f), Box 18 should indicate Petitioner's period of honorable service.

e. Petitioner claims he was experiencing PTSD during his service in the Navy. He submitted evidence of 100% service connected disability rating from the Department of Veterans Affairs. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

f. In light of the Petitioner's assertion of PTSD, the Board requested enclosure (3). The AO stated in pertinent part:

There is no evidence that Petitioner was diagnosed with a mental health condition

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in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Unfortunately, his personal statement and available VA records are not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 insufficient evidence of a PTSD diagnosis that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, and in view of reference (f), the Board determined partial relief is warranted. Specifically, the Board noted Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) contains an administrative error and warrants correction. Petitioner's DD Form 214 does not indicate his period of Honorable service from 25 August 1997 to his reenlistment on 10 July 2001.

Regarding Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in his case in accordance with the Wilkie Memo. Further, the Board considered his case in light of references (b) through (e). 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 long-term UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely negative effect it had on the good order and discipline of his command. While the Board noted Petitioner's prior good military character, they ultimately concluded his long-term absence from the Navy to avoid his obligated service was too serious to be offset by the mitigation evidence. Further, the Board noted by directing the correction to his DD Form 214, the Board is addressing any injustice in his record. Additionally, the Board concurred with the AO that there is insufficient evidence his misconduct could be attributed to PTSD. Finally, the Board determined that Petitioner already received a large measure of clemency when the Navy agreed to administratively separate him in lieu of trial by court-martial; thereby sparing Petitioner the stigma of a court-martial conviction and likely punitive discharge. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's 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: Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), per

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reference (f) to document Petitioner's continuous honorable service from 25 August 1997 to his reenlistment on 10 July 2001.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

10/11/2022

[REDACTED]

Executive Director

[REDACTED]