



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

█
Docket No: 4891-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX-XX █, USN

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 from "other than honorable" to "honorable" characterization of service on a new Certificate of Release or Discharge from Active Duty (DD Form 214) and that the name "█
█" be removed as his nearest relative from his official military personnel file (OMPF).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 26 September 2022, and, pursuant to its regulations, determined that 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 the advisory opinion (AO) from a qualified medical professional dated 19 August 2022.

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

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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. During Petitioner's enlistment processing he disclosed previous possession of marijuana and was granted an enlistment waiver. Petitioner enlisted in the U.S. Navy and began a period of active duty on 13 February 2001. On 3 April 2003, Petitioner was awarded a Navy and Marine Corps Achievement Medal for his exceptional seamanship skills and professionalism in support of Operation Enduring Freedom. On 5 April 2003, Petitioner transferred from USS [REDACTED] in [REDACTED] to Master-at-Arms accession school (MA 'A' School). Upon completion of MA 'A' School Petitioner transferred to Naval Support Activity, Pennsylvania.

d. Unfortunately, the documents related to Petitioner's administrative separation are not in his OMPF. In this regard, 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.

e. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 27 August 2004 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct," his separation code is "HKK," and his reenlistment code is "RE-4."

f. Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other Mental Health Conditions (MHC) during his military service resulting in self-medication.

g. Petitioner further contends "[REDACTED]" is no longer his relative and would like her name removed from his OMPF as his nearest relative.

h. For purposes of clemency consideration, Petitioner provided documentation in the form of a statement, character letter, post-service accomplishment certificates, OMPF and medical documents for consideration.

i. In connection with Petitioner's assertion that he incurred PTSD and other MHC during military service, which might have mitigated the circumstances that led to his discharge character 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 AO. The AO stated in pertinent part:

There is no evidence the Petitioner was diagnosed with a mental health condition during military service. Post-service, he has provided evidence of a diagnosis of PTSD that has been attributed to military service. There is insufficient information regarding his post-service depression diagnosis to attribute it to military service. Although Petitioner has pre-service problematic substance use behavior, his record indicates that he had more than three years of successful

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service in the Navy prior to his misconduct. It is possible that unrecognized PTSD symptoms contributed to a return to pre-service substance use behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may 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 insufficient evidence of another mental health condition that may be attributed to military service. There is post-service evidence his misconduct could be attributed to PTSD."

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 discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references (b) through (e) and the AO, after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions), and his narrative reason for separation, separation authority, and SPD code should be changed to align with "Secretarial Authority."

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 and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Additionally, the Board concluded Petitioner's reentry code should remain unchanged based on their determination that he continues to be unsuitable for continued naval service.

Regarding Petitioner's request that the name "[REDACTED]" be removed from his OMPF, the Board determined insufficient evidence of error or injustice was presented by Petitioner to support the requested change.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating the character of service as "General (Under Honorable Conditions)," his separation authority changed to "MILPERSMAN 1910-164," his Separation code be changed to "JFF," and his narrative reason for separation be changed to "Secretarial Authority."

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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 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.

10/12/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]