



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

█
Docket No: 5249-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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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 discharge be upgraded from "Other than Honorable" to "Honorable" characterization of service, and that his narrative reason for separation and separation code be changed on a new Certificate of Release or Discharge from Active Duty (DD Form 214). Petitioner also requested that his performance evaluation for the period of 88MAR03 to 88JUL15 be changed to reflect the original evaluation scores before they were changed by his Commanding Officer (CO) prior to discharge.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 5 December 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 including references (b) through (e). In addition, the Board considered the advisory opinion (AO) furnished by qualified mental health provider.

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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, the statute of limitations was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the United States Navy and had an initial period of Honorable active service from 26 July 1984 to 24 July 1986. Petitioner's pre-enlistment physical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Petitioner immediately reenlisted and began a second period of service on 25 July 1986.

d. On 10 February 1987, Petitioner had a 2-day period of unauthorized absence from his command, which was subsequently dismissed by his Executive Officer with an informal warning.

e. On 2 July 1987, Petitioner received an Administrative Counseling (Page 13) addressing the deficiencies in his performance and conduct, specifically regarding indebtedness and his unauthorized use of the ship's telephones.

f. On 6 August 1987, Petitioner received non-judicial punishment (NJP) for a 7.5-hour period of unauthorized absence (UA). Petitioner received 10 days of restriction and extra duties. Petitioner did not appeal his NJP. He received an Administrative Counseling (Page 13) addressing the deficiencies in his performance and conduct, specifically regarding the charge addressed at NJP.

g. On 16 February 1988, Petitioner was medically evaluated and found to be psychologically dependent on alcohol.

h. On 2 March 1988, Petitioner received his second non-judicial punishment (NJP), this time for two periods of UA totaling 10 hours and for 20 instances of wrongfully obtaining US telephone services. Petitioner received 21 days of restriction and extra duties, forfeitures of pay, and a reduction in rank (suspended for 6 months). Petitioner did not appeal his NJP.

i. In May of 1988, Petitioner was medically evaluated a second time and again found to be alcohol dependent. He was referred to a Level II Alcohol Treatment Program but failed to successfully complete the program.

j. On 20 June 1988, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to commission of a serious offense. Petitioner waived his right to consult with qualified counsel and waived his right to a hearing before an Administrative

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Separation Board. Petitioner was notified that the least favorable characterization of service was an Other than Honorable (OTH) characterization.

k. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy, on 15 July 1988, with an OTH characterization of service, a narrative reason for separation of "Misconduct – Commission of a Serious Offense" a separation code of "HKQ," and a reenlistment code of "RE-4."

l. Petitioner contends that he was experiencing personal stressors during his military service, including the birth of his son in December 1987 and the declination of his marriage proposal, which contributed to his alcohol use. Petitioner alleges that his discharge performance evaluation was "changed, falsified and not reflective of his performance" and that modifications were made after its issuance in order to support the OTH discharge.

m. For purposes of clemency consideration, Petitioner provided documentation in support of his petition, to include portions of his OMPF and medical documents. Specifically, he submitted an August 2022 Department of Veterans Affairs (VA) disability benefits questionnaire listing diagnoses of PTSD and Anxiety, but noting that a review of PTSD diagnostic criteria was "not done," and a note was referenced with more information that was not available for review. He provided medical records from November 2019 to August 2022 regarding treatment of advanced diabetic foot infections, including amputations and prosthesis, with no information regarding mental health diagnosis or treatment.

n. In connection with Petitioner's assertion that he incurred PTSD 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 licensed clinical psychologist (Ph.D.), who reviewed the Petitioner's contentions and the available records and issued an AO dated 28 September 2022. The AO stated in pertinent part:

During military service, he was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and the evidence indicates he was aware of his misconduct and responsible for his behavior. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. Post-service, he has received diagnoses of PTSD and anxiety from a VA clinician, but there is no context for these diagnoses or information to attribute them to military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, given his history of substandard performance prior to entering into active duty. Additional records (e.g., complete 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.

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The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.

- o. Petitioner did not submit a rebuttal to the AO.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references (b) through (e), 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). The Board agreed with the AO that there was insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. Therefore, the Board did not base their upgrade recommendation on mental health issues. Instead, the Board recommended a characterization upgrade as a matter of equity. Similarly, the Board concluded Petitioner's narrative reason for separation and separation code should also be changed to reflect a Secretarial Authority.

Notwithstanding the recommended corrective action directed below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and how service-related traumatic events may have impacted his behavior. However, 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 otherwise not be held accountable for his actions. The Board highlighted 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. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even under the liberal consideration standards for mental health conditions, and that even though flawless service is not required for an Honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's repeated misconduct.

Finally, the Board was not willing to grant a change to Petitioner's enlisted performance evaluation for the reporting period ending on 15 July 1988. The Board gave deference to the CO's assessment of the Petitioner's performance, to include the CO's ability to change performance marks to reflect misconduct during a particular reporting period.

RECOMMENDATION:

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

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Petitioner be issued a new DD Form 214, for the period ending 15 July 1988, indicating the character of service as "General (Under Honorable Conditions)", the 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".

No further changes be made to Petitioner's record.

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.

12/16/2022

[REDACTED]
Executive Director
[REDACTED]