



Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],  
USN, [REDACTED]

d. On 21 June 2006, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) totaling eight days.

e. On 28 June 2006, Petitioner received an administrative counseling concerning deficiencies in his performance and conduct. Petitioner was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation

f. On 30 June 2006, Petitioner received his second NJP for UA totaling seven days and two specifications of failure to obey a lawful order or regulation.

g. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to pattern of misconduct. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

h. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 27 July 2006, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct. Upon his discharge, he was issued a DD Form 214 that erroneously lists his active duty start date as 19 April 2006 vice 4 April 2006.

i. Petitioner provided the following contentions:

1) His mental health problems became too much to bear, he was suffering from post-traumatic stress disorder (PTSD) and a traumatic brain injury (TBI). Additionally, he has been diagnosed with schizophrenia and bipolar disorder;

2) He witnessed his friend pass away in an accident. This incident left him feeling hopeless, having seizures in his bunk; it would take him days to recover;

3) The injuries from the accident stopped his career and affected his performance;

4) He feared that everyone was out to "kill him" like his friend was "killed";

5) He was told he was approved to take leave, not to be separated from the military. He would have never agreed to leave; and

6) He never received a DD Form 214, nor any other separation paperwork.

j. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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k. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Unfortunately, the veteran's personal statement and available records are not sufficiently detailed to establish clinical symptoms during military service 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, Petitioner provided a rebuttal statement that supplied additional clarification of the circumstances of his case. The Board also noted Petitioner provided additional documentation.

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice.

In regard to Petitioner's request for an upgrade of his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to commission of a serious offense. However, because Petitioner based his claim for relief in whole or in part upon his PTSD and TBI, the Board reviewed his application in accordance with the guidance of references (b) through (e).

The Board applied liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) through (d), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board did not believe that relief is warranted under the totality of the circumstances. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command. Furthermore, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that his misconduct could be attributed to a mental health condition. In addition, 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

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inappropriate. Finally, 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 concluded by opining that Petitioner's conduct constituted a significant departure from that expected of a Sailor, even under the liberal consideration standards for mental health conditions, and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, 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.

However, as previously mentioned, the Board determined that Petitioner's DD Form 214 contains an error. The Board noted that Block 12 (Record of Service) of the Certificate of Release or Discharge From Active Duty (DD Form 214) inaccurately reflects Block 12a, Petitioner's Date Entered AD This Period as "2006 APR 19." In this regard, the Board determined that the error was administrative and concluded that Block 12a of the DD Form 214 should accurately reflect his Date Entered AD This Period as "2006 APR 04," with an associated change to Blocks 12c.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 215 reflecting Block 12a to read "2006 APR 04." NPC is directed to make a corresponding change to Block 12c as required.

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

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

11/3/2022

[REDACTED]

Executive Director

[REDACTED]