



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

[REDACTED]
Docket No: 5721-22

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, XXX-XX-[REDACTED]

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 Certificate of Release or Discharge from Active Duty (DD Form 214) characterization of service be upgraded to General (Under Honorable Conditions) (GEN).

2. The Board, consisting of [REDACTED], [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 November 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, 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 clemency determinations (Wilkie Memo) regarding equity, injustice, or clemency determinations. Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider.

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 regulation within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the U.S. Navy and began a period of active duty on 30 January 2004. On 14 May 2004, he received his first nonjudicial punishment (NJP) for failure to obey order or regulation by consuming alcohol while underage. On 1 June 2004, Petitioner received training based on the Command Drug/Alcohol Abuse Program. On 25 April 2005, he received a second NJP for failure to obey order or regulation and drunkenness-incapacitation for performance of duties through wrongful indulgency in intoxicating liquor. Petitioner was subsequently issued an administrative counseling retaining him in the naval service but documenting his deficiencies. This administrative counseling also captured any further deficiencies in his performance and/or conduct may result in disciplinary action and processing for administrative separation. On 15 May 2007, Petitioner was convicted by a civilian court of an emergency vehicle violation and sentenced to pay court costs and attend a driving improvement course. He was subsequently issued an addition administrative counseling documenting his misconduct yet retaining him in the naval service. On 26 September 2007, Petitioner received a third NJP for provoking speeches and gestures, communicating a threat, disorderly conduct/drunkenness, and self-injury without intent to avoid service. On 27 October 2007, he received a fourth NJP for a 16-day period of unauthorized absence (UA), failure to obey an order or regulation, and disorderly conduct. On 19 November 2007, Petitioner was dropped from an alcohol treatment program and refused to participate in intensive outpatient. His official military personnel file (OMPF) further documents that he was dropped from alcohol rehabilitation treatment on 12 November 2007.

c. On 28 November 2007, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of Pattern of Misconduct (POM) and Commission of a Serious Offense (COSO). 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).

d. On 3 December 2007, Petitioner's commanding officer (CO) forwarded his administrative separation package to the separation authority (SA) recommending Petitioner be administratively discharged from the Navy by reason of POM and COSO Other Than Honorable Condition." The SA approved the recommendation for administrative discharge and directed Petitioner be discharged with an OTH characterization by reason of Misconduct and, on 17 December 2007, he was so discharged.

e. Petitioner contends he incurred PTSD and other mental health concerns during military service which might have mitigated his discharge character of service.

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

During military service, he was diagnosed with an alcohol use disorder. Problematic alcohol use in incompatible with military readiness and discipline. The evidence indicates he was aware of the potential for misconduct when he consumed alcohol and responsible for his behavior. Post-service, he has provided evidence of a mental health condition attributed to military service by the VA. A civilian therapist has attributed a PTSD diagnosis to military service. It is possible that his alcohol use and associated misconduct could have been maladaptive coping strategies in response to the stressors of multiple deaths in his extended family. Additional records (e.g., post-service mental

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health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would strengthen the opinion.

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

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request should be upgraded in the interests of justice.

The Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in his separation from the Navy with an OTH discharge. Further, the Board found no error in Petitioner's OTH discharge by commission of a serious offense. However, in light of references (b) through (e), after reviewing the record holistically and given the totality of the circumstances, in light of the Advisory Opinion and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to a more appropriate characterization of service by upgrading Petitioner's discharge characterization of service to GEN in the interests of justice.

Notwithstanding the recommended corrective action below, the Board determined, after applying liberal consideration, all other aspects of Petitioner's record remain appropriate in light of the seriousness of his misconduct. Ultimately, the Board concluded that the recommended relief was sufficient to address any injustice in Petitioner's record based on the mitigation evidence provided.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 reflecting that his character of service was "General (Under Honorable Conditions)."

That no further changes to the record are required.

That a copy of this report 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.

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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.

12/1/2022

