



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

██████████  
Docket No. 5737-22  
Ref: Signature Date

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

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

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

Encl: (1) DD Form 149 w/ attachments  
(2) Advisory opinion by Ph.D., Licensed Clinical Psychologist, 17 Jan 23  
(3) Response to advisory opinion, 3 Feb 23

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 General (under honorable conditions) and granting a disability discharge.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 2 March 2023 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 Petitioner's naval records, and applicable statutes, regulations, and policies, to include references (c) through (f).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. Petitioner enlisted in the Navy on 18 September 1972 and served satisfactorily until he underwent non-judicial punishment (NJP) on 10 July 1975 for violating Article 86 of the Uniform Code of Military Justice (UCMJ), unauthorized absence (UA) from 2 June 1975 until 22 June 1975. He received a second NJP on 11 October 1976 for violating Article 86, UCMJ, UA from 27 to 30 July 1976 and 17 to 18 September 1976; as well as for violating Article 87,

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missing movement on 30 July 1976. He served without further incident until he was discharged on 11 February 1979 with an honorable characterization of service. Reference (b).

b. Petitioner immediately re-enlisted on 12 February 1979 and was discharged on 12 February 1981 with an honorable characterization of service. Reference (b).

c. On 25 September 1981, Petitioner re-enlisted as a ██████████. In July 1984, he was formally counseled regarding a vehicle accident involving alcohol and recommended for in-house treatment of alcohol dependency. Petitioner underwent the Level III in-patient alcohol program, completed a third honorable period of service on 6 June 1985, and immediately re-enlisted on 7 June 1985. Reference (b).

d. Petitioner was advanced to E-6 on 16 October 1985. Starting in April 1987, Petitioner was seen by medical for hypertension – uncontrolled and seen by a dietician for low sodium dietary instructions and his weight 215 lbs. with a set goal of 185 lbs. That same month, Petitioner sought medical treatment for chest pains which started after an argument with his spouse. On 15 November 1988, Petitioner received NJP for violating Article 92, UCMJ, dereliction of duty by failing to take the physical fitness test; he received forfeiture of pay and reduction to BM2, which was suspended for six months. In November 1988, Petitioner reported to sick call for alcohol evaluation and self-referred for Antabuse [prescription]. He was evaluated and diagnosed for Alcohol Use Disorder. In April 1989, Petitioner was hospitalized for seven days and diagnosed with Acute Alcoholic Hepatitis, Alcohol Abuse. On 16 May 1989, Petitioner received NJP for violating Article 86, UCMJ, UA from 21 to 25 April 1989 and received forfeiture of pay, restriction, extra duty, and reduction to BM2. On 1 June 1989, he appealed the NJP. On 5 June 1989, Commander, Naval Surface Group ██████████ (COMNAVSURFGRP ██████████) found the punishment awarded was within Petitioner's Commanding Officer's (CO) authority and that it was appropriate to the offenses and past disciplinary involvement. However, as a result of the delay in processing Petitioner's appeal, COMNAVSURFGRP ██████████ suspended the restriction and extra duty in excess of 8 days and all forfeiture of pay in excess of \$925.00, for six months from the date of Mast, or until his release from active duty, which was set at the expiration of active obligated service on 16 June 1989. Petitioner requested retention on active duty, stating that his UA events were due to his depression. In June 1989, he was granted a two-year probationary re-enlistment with a stipulation that he be provided medical consultation or treatment for his depression. Reference (b).

e. On 11 January 1990, Petitioner was treated in sick bay for chest pains and obvious distress while underway on the ██████████ and then transferred to Naval Hospital ██████████ once the ship arrived in port. Subsequently, he went UA and underwent NJP for violating Article 86, UCMJ on 11 February 1990; he was awarded forfeiture of pay, restriction, and extra duty for 30 days. On 20 February 1990, Petitioner was diagnosed with Adjustment Disorder and Alcohol Abuse. He then had multiple periods of UA from May to June 1990, which culminated in hospitalization for seven days for alcohol detoxification from 20 to 27 June 1990. During this period, medical providers recommended Petitioner for Level III Treatment for alcohol abuse. On 28 June 1990 Petitioner underwent NJP for violating Article 86, UCMJ, UA on 27 May 1990 and was reduced to BM3. On 8 July 1990, Petitioner underwent NJP for four specifications of violating Article 87, UCMJ, missing movement on 2 May 1990, 7 May 1990, 15 May 1990, and

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8 June 1990; and three specifications of violating Article 86, UCMJ, UA from 27 April to 2 June 1990, 8 to 13 June 1990, and 13 to 19 June 1990. Petitioner was awarded restriction and extra duty for 45 days and reduced to ████████. Reference (b).

f. On 10 August 1990, the CO of ██████████ notified Petitioner that he was being recommended for administrative separation by reason of misconduct due to commission of serious offenses. Petitioner consulted counsel, did not object to his separation, waived his right to an Administrative Board, and acknowledged that if his separation is under other than honorable conditions “it may deprive [him] of virtually all veterans’ benefits based upon [his] current period of active service. . .” Petitioner was discharged with an Other Than Honorable (OTH) characterization of service on 21 September 1990. Reference (b).

g. Petitioner’s service medical record was not available, but information regarding his service medical history was considered during a 1991 Naval Discharge Review Board (NDRB) hearing regarding his discharge characterization of service which is a part of his OMPF at reference (b). A review of Petitioner’s records reveals that, during his service, he had several medical contacts, which are set forth in more detail in the advisory opinion (AO) at enclosure (2). Notably, while in service he was diagnosed with depression, Alcohol Use Disorder, and Adjustment Disorder. Post-service, the Department of Veterans Affairs (VA) evaluated Petitioner, noting in 2015 that since the early 1990s Petitioner has been prescribed medication for the maintenance of Panic Disorder. The VA examiner opined that Petitioner’s records are indicative of an Anxiety Disorder during Petitioner’s time in service.

h. In his petition, Petitioner states that during his last two years of service he was suffering from anxiety and depressed mood. He points out that his misconduct in his last period of active duty involved only UAs. Petitioner claims he went UA in order to handle the anxiety and stress and to avoid getting into altercations with other service members. He further contends that his command did not support him in getting medical assistance with his issues; specifically, medical providers repeatedly recommended him to be returned to Level III treatment for alcoholism, but his CO denied the request. Finally, Petitioner, in a letter dated 5 March 1991, and in this petition, contends that his command unjustly marked him as UA from 10 August 1990 to 21 September 1990. Petitioner claims that on 12 July 1990 he was given permission to go home to await discharge, that he received a call to sign discharge papers on 9 August 1990, and that he signed paperwork on the same day that he was purported to be UA. Enclosure (1).

i. As part of the Board’s review, a qualified mental health professional reviewed Petitioner’s request and provided the Board with an AO. The AO discussed the Petitioner’s mental health status while he was on active duty, and concluded “[b]ased on the available evidence, it is my clinical opinion there is evidence of mental health conditions that may be attributed to military service. During military service, he was diagnosed with an adjustment disorder. Post-service, the VA has determined a diagnosis of panic disorder that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.” Enclosure (2).

j. In his response to the AO, Petitioner argued that his last command was not supportive of him and that he self-medicated using alcohol. Petitioner admits to his misconduct, the UAs, but

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argues that his misconduct should be viewed in the light of his mental health condition and an upgraded discharge to General (under honorable conditions) is warranted. Enclosure (3).

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that clemency is warranted in the interests of justice.

The Board considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (f). Specifically, the Board determined that the interests of justice supports changing Petitioner's discharge characterization from OTH to General (under honorable conditions). In reaching this conclusion, the Board reviewed the guidance set forth in references (c) through (f) and based its decision primarily in view of the factors set forth in the reference (f), Wilkie Memo, as well as the insight provided by the VA Mental Disorders compensation and pension exam of September 2015. As a result of its review of the foregoing factors and the evidence of record, the Board acknowledged Petitioner struggled with various mental health factors such as Adjustment Disorder and depression during his service such that, under the facts of this petition, were sufficient to warrant partial relief.

Despite the Board's recommendation to grant partial relief as a matter of clemency, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including providing him a disability discharge. Specifically, the Board found no evidence of unfitness based on any qualifying disabling condition during Petitioner's period of active service. In order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health of the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting. The Board observed Petitioner's actual reason for separation was a result of his misconduct.

## RECOMMENDATION

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

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting his characterization of service at the time of his discharge on 21 September 1990 was General (under honorable conditions).

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

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

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

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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.

4/15/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]