



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

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Docket No: 6074-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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Ref: (a) 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/ enclosures
(2) Advisory Opinion (AO) of 12 Oct 22

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 to "Honorable" and that his "RE-4" reentry code be changed. Enclosures (1) and (2) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 30 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 references (b) through (e).

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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Navy and began a period of active duty on 16 August 2000. In October of 2003, he reported to military medicine with complaints of loss of appetite, loss of weight, and multiple stressors. He was diagnosed with Adjustment Disorder and prescribed Prozac.

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[REDACTED]

c. Prior to this diagnosis, his record reflects four highly positive performance evaluations to include covering two periods of deployment in support of Operation ENDURING FREEDOM and Operation ACTIVE ENDEAVOUR, and he was awarded five letters of commendation and two Navy and Marine Corps Achievement Medals.

d. Petitioner's record reflects a period of lost time from 14 January 2004 through 22 February 2004 during which he was in an unauthorized absence (UA) status and missed movement on four specific occasions from 22 January 2004 through 7 February 2004. Following his surrender, he was subject to nonjudicial punishment (NJP) for violations of: Article 86, UA; Article 87, missing movement; and, Article 12a, misuse of a controlled substance – specifically, marijuana. He was reduced to the next lower grade, placed on restriction and extra duty for 45 days, awarded forfeitures of pay, and recommended for expeditious administrative separation. Further documentation from his administrative separation processing was not retained in his official record; however, he was discharged for misconduct, on 12 March 2004, with an Other Than Honorable characterization of service and a final trait average of 3.54.

e. Petitioner was previously denied by this Board in 2009 after contending his misconduct was an isolated incident that occurred during a “down” period in his life; he also submitted evidence of post-discharge character. On 12 July 2010, the Department of Veteran's Affairs (VA) determined that Petitioner had a service connected disability due to post-traumatic stress disorder (PTSD), specifying that the VA concedes he “experienced a stressful event in service or fear of hostile military or terrorist activity.” The VA subsequently determined Petitioner's service to be honorable for its purposes on the basis that his misconduct involved a “series of relatively minor offenses during a 1 month period of approximately 3.5 years of meritorious service,” noting that Petitioner served without incident prior to his mental health diagnosis, that his marijuana use followed his mental health diagnosis, that he suffered a significant weight loss in the period prior to his discharge due to life stressors, that he contended he had been denied follow-up treatment, and that his marijuana use had been self-medicating.

f. Petitioner was again denied relief in 2017 after applying to the Board for reconsideration on the basis that his characterization was unjust because it did not account for his overall quality of service or his mental health disability or the fact that his state of mind and symptoms of PTSD negatively affected his behavior and contributed to his misconduct. He now seeks reconsideration of substantially the same contentions under the revised policy guidance, asserting that he was an outstanding sailor prior to suffering from mental health problems. In support of his contentions, he has submitted evidence regarding his VA disability rating and diagnosis; his service medical records were also available for review.

g. Because Petitioner contends that a mental health condition affected his discharge, the Board requested enclosure (2), the AO. The AO stated in pertinent part:

Previous record review indicated the Petitioner was diagnosed with an adjustment disorder during military service. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to

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[REDACTED]

disclose, and the psychological evaluation performed by the mental health clinician. Post-service, the VA has granted service connection for PTSD. It is possible the mental health symptoms identified as adjustment disorder during military service have been re-conceptualized as PTSD with the passage of time. His misconduct could be conceptualized as avoidance following a traumatic precipitant. Additional records (e.g., complete in-service or post-service mental 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 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 concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

The Board noted Petitioner's misconduct and does not condone it; however, the Board concurred with the opinion of the AO regarding Petitioner's contentions of suffering from a mental health disorder during his military service, which the Board agreed contributed to his misconduct of avoidance behaviors and self-medication. Additionally, in spite of the absence of further documentation regarding Petitioner's administrative separation, the Board noted that his misconduct occurred shortly in time after his mental health diagnosis and the prescription of mental health medication, for which follow-up was recommended but is not documented in his record. Further, the Board noted that the recommendation for "expeditious" separation following mental health diagnosis more likely than not reflects that concern for Petitioner's mental health factored into the circumstances of his discharge. The Board found that the mitigating factor of Petitioner's contended mental health condition sufficient to partially outweigh his misconduct. Accordingly, the Board determined that it is in the interest of justice to grant partial relief in the form of an upgrade to his characterization of service to General (Under Honorable Conditions).

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 also determined Petitioner's reentry code remains appropriate in light of his misconduct and unsuitability for future military service. The Board concluded any injustice

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in Petitioner's record was sufficiently addressed through the recommended corrective action below.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 12 March 2004, his "General (Under Honorable Conditions)" discharge was issued.

That 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 Regulation, 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.

12/19/2022

[REDACTED]