



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

█  
Docket No: 6437-22

Ref: Signature date

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

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

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 w/attachments  
(2) Case summary  
(3) Mental Health Advisory Opinion (AO) of 26 October 2022

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 from under Other Than Honorable (OTH) conditions.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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, to included references (b) through (e). The Board also considered enclosure (3), the AO from a qualified mental health provider. Although Petitioner was provided the opportunity to respond to the AO, he chose not to do so.

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

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although the enclosure was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the Navy with a waiver for Delayed Entry Program (DEP) discharge due to failure to graduate from high school. On 18 March 1991, Petitioner began a period of active duty. On 7 October 1991, Petitioner began a period of unauthorized absence (UA) which lasted 40 minutes. On 26 November 1991, Petitioner began a second period of UA which lasted 4 hours and 30 minutes. On 30 December 1991, Petitioner was counseled for his lack of personnel financial responsibilities. He was advised that failure to take corrective action could result in administrative separation. On 31 December 1991, Petitioner received nonjudicial punishment (NJP) for four instances of uttering checks without sufficient funds. On 21 February 1992, Petitioner began a period of UA which ended with his apprehension by civil authorities for armed robbery. On 10 June 1992, Petitioner was convicted for armed robbery and sentenced to 3 years in confinement. On 29 June 1992, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, at which point, he decided to exercise his right to a hearing by an Administrative Discharge Board (ADB). On 7 October 1992, the ADB voted (3) to (0) that Petitioner committed misconduct due to commission of a serious offense and civilian conviction (felony) and recommend his discharged with an OTH. On 29 October 1992, the Petitioner's commanding officer concurred with the recommendation. On 2 November 1992, the separation authority approved the recommendation and Petitioner discharged. On 20 November 1992, Petitioner was discharged in absentia with an OTH.

d. Petitioner contends his actions at the time he was in service did not reflect well in the Navy or himself. Following his deployment to Desert Shield/Desert Storm, Petitioner was experiencing a great deal of anxiety and depression. He states that in no way this could be used to excuse his horrendous actions and he completely accept the responsibility for his actions and served punishment. He is very proud of his participation during Desert Shield/Storm and he has exhausted all efforts to make up for his past mistakes. Petitioner was recently awarded a pardon from the [REDACTED] Department of Probation, Parole and Pardon Services. Petitioner and his wife are successful business owners for the past 8 years and he later transitioned to a federal employee working for DoD and then as a Federal Contractor for 16 years. He has been the Supply Support Activity (SSA) Manager and Property Book Officer for the past 10 years and he is proud of providing service to those in uniform. Petitioner was also a Recruitment Officer in his local Association of the United States Army and enjoys the support he provides for the Army and veterans.

e. Based on Petitioner's assertion that he suffered from a mental health condition that may have mitigated his misconduct, the Board considered enclosure (3). The AO stated in pertinent part:

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

The Petitioner contends that he suffered from mental health conditions (depression and anxiety) following deployment in service. As evidence, he submitted a certificate of pardon from the [REDACTED] Department of Probation, Parole and Pardon Services, 3 character references, and post-service accomplishments. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms 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.

## CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (e), the Board determined that Petitioner's request warrants relief. Specifically, even though the Board determined Petitioner's actions warranted an Other Than Honorable discharge characterization at the time of his separation based on the severity of his misconduct, the Board noted Petitioner's positive post service conduct which included earning his pardon from the [REDACTED] Department of Probation, Parole and Pardon Services, and career as a Supply Support Activity Manager for the Army. Based on the mitigation evidence provided, the Board determined Petitioner's positive post service achievements support clemency in his case in the form of an upgraded 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, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Additionally, the Board found that Petitioner's narrative reason for separation, separation code, separation authority, and reentry code remain appropriate based on the seriousness of his misconduct. While the Board felt some clemency was warranted in Petitioner's case, ultimately, they concluded any injustice in his record was sufficiently addressed by the recommended corrective action. In making this finding, the Board considered the AO and concurred with its conclusions.

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

## RECOMMENDATION

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

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) indicating a General (Under Honorable Conditions) characterization of service.

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

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

Exdcutive Director

Signed by: [REDACTED]