



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

██████████  
Docket No. 6582-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
██████████

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 9 Jan 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 discharge be upgraded to “Honorable,” that his narrative reason for separation be changed to “Secretarial Authority” or “Disability,” and that his reentry code be changed to “RE-1.” Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 3 March 2023, 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). In addition, the Board considered enclosure (2), the AO from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to the AO, he chose not to do so.

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 26 January 1989. Petitioner's pre-service history included mental health treatment for a nervous breakdown at the age of 12, alcohol and marijuana use as early as age 13, and methamphetamine use beginning at age 16. This information was disclosed in post-discharge records submitted with his initial application to the Board; however, Petitioner failed to include this information in his 20 January 1989 report of medical history. At the time of his enlistment, he chose not to disclose any medical condition except hay fever.

c. Petitioner served for nearly 3 years without incident prior to his first nonjudicial punishment (NJP), on 2 January 1992, for a violation of Article 112a due to wrongful use of marijuana. He was notified the following day of administrative separation processing due to drug abuse. He elected to waive all applicable rights, and the recommendation for his discharge under Other Than Honorable (OTH) conditions was immediately forwarded.

d. Prior to his discharge, Petitioner was screened for drug abuse and found not to be dependent.

e. Petitioner's separation under OTH conditions for the reason of misconduct due to drug abuse, with a prohibitive "RE-4" reentry code, was directed on 14 February 1992, and he was discharged accordingly, on 24 February 1992, with a final trait average of 3.6.

f. The Department of Veteran's Affairs (VA) conducted a character of service determination and found Petitioner's service "Honorable" for VA purposes on 30 October 1995.

g. Petitioner's initial application to the Board was considered on 2 August 2021 in Docket No. 1555-21. Petitioner submitted a personal statement in which he tied his condition of post-traumatic stress disorder (PTSD) and his aggravated symptoms of bipolar disorder to witnessing and experiencing the impact of mines detonating in the water while deployed aboard a ship in the Persian Gulf. He stated that his subsequent marijuana use was self-medicating due to symptoms of panic attacks and insomnia. He provided evidence linking his diagnosis of PTSD to his military service, which had not been diagnosed prior to his discharge. He also asserted that his OTH was unduly severe in light of his single NJP for marijuana use, which he states the VA now approves for treatment.

h. The medical records submitted in support of Petitioner's previous application revealed his pre-service mental health history and drug abuse, as noted above. The AO considered by the Board, at that time, advised that it was common for persons who suffer from mental health symptoms to resort to maladaptive coping skills such as marijuana use, and that his PTSD or Bipolar Disorder symptoms may mitigated his in-service drug use, but would not mitigate his non-disclosure of his pre-service mental health treatment or pre-service drug abuse.

i. The Board denied Petitioner's previous request for relief on the basis that it did not concur, under the totality of circumstances upon review of Petitioner's overall service record, that the misconduct for which Petitioner was separated might be mitigated by his contended mental health condition.

j. Petitioner comes before the board now contending, through counsel, that his previous application merits reconsideration on the basis that the board “erred and failed to provide any rationale when it disagreed with the 24 May 2021 mental health advisory opinion’s assertion that [Petitioner]’s marijuana use may be mitigated by his PTSD” and that premising the Board’s denial upon his undisclosed pre-enlistment drug use is inequitable and violates Department of Defense guidance as set forth in references (b) through (e).

k. Petitioner submits new evidence in the form of a medical opinion from a civilian mental health provider, supplemented with his personal statement in which he asserts that he told his recruiters about his pre-service drug use but was rushed through the paperwork after being told by them not to worry about it. Petitioner also denies any recollection of questions regarding his mental health history during his initial entry.

l. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested the AO at enclosure (2) for consideration. The AO stated in pertinent part:

In a previous claim, Petitioner submitted notes from [REDACTED] Mental Health ranging from August 2018- October 2019, where he was diagnosed with Bipolar I Disorder, PTSD, Unspecified Anxiety Disorder, Alcohol Use Disorder Severe, Other Specified Stimulants Use Disorder in remission, Cannabis Use Disorder, Amphetamine Use Disorder in Full Remission, and Hallucinogenic Use Disorder Full Remission. He also submitted a letter from L. – MSW dated June 22, 2020 who diagnosed the Petitioner with PTSD due to having “seeing and hearing the detonation of mines while deployed on ship during the gulf war. He submitted 4 scholarly articles on affective disorders and substance use. For the current claim, he submitted a letter from S. - PhD dated January 14, 2022, who also indicated that she diagnosed him with PTSD due to witnessing and experiencing detonation of underwater mines.

The Petitioner also provided post-service evidence of a variety of mental health and substance abuse conditions. Post-service records also indicate a pre-service admission of substance use which was not recorded on enlistment paperwork. It is not uncommon to fall back on previously used substances repetitively in ones future, particularly during times of duress. It is more plausible that the Petitioner’s in-service substance use could be attributed to prodromal symptoms of bipolar disorder, rather than symptoms of unrecognized PTSD.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence the Petitioner was experiencing symptoms of PTSD during military service. There is post-service evidence from his civilian providers that he may have been experiencing a mental health condition (bipolar I disorder) during military service. There is post-service evidence his misconduct could be attributed to symptoms of Bipolar I disorder.”

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[REDACTED]

#### 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 in its identification, based on Petitioner's post-discharge medical evidence, that he began experiencing early signs and the initial onset of his Bipolar I Disorder during his military service. The Board noted that, although Petitioner had a pre-service history of drug use, he served without incident for nearly 3 years and his was almost immediately separated following his positive urinalysis. As a result, the Board also concurred with the AO that it is plausible Petitioner's return to marijuana use during his military service could be attributed to the symptoms of his Bipolar I Disorder, which have since been identified as beginning during his military service. The Board found under a grant of liberal consideration that the mitigating factor Petitioner submitted for consideration with respect to his contended mental health condition outweighed the single instance of drug abuse misconduct evidenced by NJP for marijuana use. Accordingly, the Board determined that it is in the interest of justice to grant partial relief in the form of a discharge under honorable conditions and to change Petitioner's narrative reason for separation from a misconduct basis to "Secretarial Authority"; however, the Board found the mitigating effect of Petitioner's mental health condition insufficient to merit the extraordinary relief of a fully "Honorable" discharge.

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, with respect to Petitioner's request for a change to his reentry code, the Board noted that his mental health conditions would, at a minimum, mandate a more restrictive reentry code than "RE-1" on the basis of his potential unfitness for service. Therefore, the Board found insufficient evidence to merit the requested change to his reentry code. Ultimately, the Board concluded that the recommended corrective action adequately addresses any injustice in Petitioner's record.

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 24 February 1992, his "General (Under Honorable Conditions)" discharge was issued under the separation authority of "MILPERSMAN 3630900"

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[REDACTED]

for the narrative reason of “Secretarial Authority” with a separation code of “JFF.”

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.

3/22/2023

[REDACTED]

Executive Director

[REDACTED]