



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

[REDACTED]
Docket No. 6958-22

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, [REDACTED]

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 with attachments
(2) Case Summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion (AO) of 10 February 2023

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 to upgrade his characterization of service. Enclosures (2) and (3) apply.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered enclosure (4), an 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:

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

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

c. On 27 April 1999, Petitioner enlisted in the United States Navy. From 27 April 1999 to 21 November 2002, Petitioner completed a period of Honorable service and immediately reenlisted on 22 November 2002.

d. On 15 February 2005, Petitioner began a period of unauthorized absence (UA from his command, and remained UA until 22 February 2005, for a total of seven days.

e. On 24 February 2005, Petitioner was found guilty at Non-judicial Punishment (NJP) of violating Uniform Code of Military Justice Article 112(a), for the wrongful use of a controlled substance (marijuana). He was awarded restriction and extra duties for 45 days, forfeitures of pay, and reduction to the next inferior pay grade. He did not appeal this NJP.

f. On 1 March 2005, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. Petitioner waived his right to consult with counsel and his right to an administrative separation board.

g. Petitioner was offered Level III Substance Abuse Treatment, but declined treatment on 17 March 2005.

h. On 18 March 2005, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse and assigned an RE-4 reenlistment code. However, his DD Form 214 did not contain his previous period of Honorable service in Block 18.

i. In his application for relief, Petitioner contends that he incurred PTSD and depression following the bombing of the ██████████ and two deployments to Iraq. He claims that "between the anxiety, depression, fear of being killed in a war zone...[he] experimented with marijuana...[to receive] some kind of relief." As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued enclosure (4). The Ph.D. noted in pertinent part:

There is no evidence he was diagnosed with a mental health condition in military service. He has provided no post-service medical evidence to support his claims. His personal statement is lacking sufficient detail to establish clinical symptoms in service or a nexus with his misconduct. Additional records (e.g., active duty or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

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The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner’s request merits partial relief.

After review of Petitioner’s official military personnel file (OMPF), the Board determined that Petitioner’s DD Form 214 contains an administrative error. Specifically, as previously discussed, the Board noted Petitioner has a period of honorable service from 27 April 1999 to 21 November 2002, which is not reflected on his separation document. Applicable regulations authorize the language “Continuous Honorable Active Service” in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization of “Honorable,” as is the case at present. In this regard, the Board determined Petitioner’s naval record shall be corrected to reflect his continuous Honorable active service for the above referenced period.

In regard to Petitioner’s request for an upgrade of his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with references (b) through (e). After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of Petitioner’s misconduct and concluded that his misconduct showed a complete disregard for military rules and regulations. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command.

Further, the Board concurred with the advisory opinion that there was no evidence that Petitioner suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of his discharge. Petitioner did not provide medical evidence to support his claims, nor did his personal statement include sufficient detail to establish clinical symptoms in service or a nexus with his misconduct. Throughout his disciplinary processing, he never raised concerns of mental health symptoms that would have resulted in mental health referral. Thus, the Board concluded that Petitioner’s misconduct was not due to mental health-related symptoms, rather, that his active duty misconduct was intentional and willful and demonstrated that he was unfit for further service. Finally, for purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters. As a result, the Board determined that an OTH characterization of service remains appropriate in this case. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that no additional relief, aside from the error noted above, was warranted in this case.

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RECOMMENDATION:

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

That Petitioner's naval record be corrected to show his period of service from "27 April 1999 to 21 November 2002" as "Honorable."

Petitioner shall be issued Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) with a correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "27 April 1999 to 21 November 2002."

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

That 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 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.

3/22/2023

[REDACTED]
Executive Director
[REDACTED]