



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

[REDACTED]
Docket No. 7115-22
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,
XXX-XX-[REDACTED]

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 21 Nov 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. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 13 January 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).

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 was discharged following a period of Honorable active service from 1 April 1980 through 31 March 1986. After a period of broken service, he enlisted into the Navy Reserve on 26 September 1986 and began a subsequent period of active duty service on 9 September 1987. He served honorably and reenlisted two additional times, with the last reenlistment beginning on 30 September 1993 for a period extending into 1997.

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c. During Petitioner's final enlistment, he received awards for his participation in [REDACTED], [REDACTED], and [REDACTED] from [REDACTED] in support of humanitarian crises. Following these deployments, Petitioner was subject to nonjudicial punishment (NJP) on 24 March 1995 for a violation of Article 92 due to his failure to obey an unspecified lawful order.

d. The following year, he was discharged on 15 February 1996 in lieu of trial by court-martial for offenses which his records do not further describe. Comments in the block 18, Remarks, for his single Certificate of Release of Discharge from Active Duty (DD Form 214) for his service beginning 9 September 1987 omitted his period of continuous honorable service which extended until his reenlistment on 30 September 1993.

e. Petitioner contends that he suffered a mental health condition during his active service but was unable to get the help he needed because their crew was overworked and understaffed, without access to mental health care, which he asserts rendered him "unable to take care of everything happening at that time." He states that he has not had any additional problems since his discharge and has lived a productive life.

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

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during military service 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 experienced during military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

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 with respect to his omitted period of continuous Honorable service. The Board reviewed Petitioner's application under the guidance provided in references (b) through (e) intended to be covered by this policy.

With respect to Petitioner's request for an upgrade to his last period of active duty service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in his case in accordance with the Kurta, Hagel, and Wilkie Memos. After

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thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP and discharge in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO regarding the lack of supporting medical evidence upon which to determine that his contended, but unspecified, mental health condition might have mitigated his likewise unspecified misconduct. Finally, the Board determined that Petitioner already received a large measure of clemency when the Navy agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and likely punitive discharge. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief beyond what is recommended 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 Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) specifying a comment in his block 18, Remarks, that he served a "Period of continuous active service from 9 September 1987 – 30 September 1993."

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.

1/27/2023

