



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

█  
Docket No. 7167-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █  
█ USMC

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

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 characterization of service be changed from Bad Conduct Discharge to Honorable or Medical on his Certificates of Release or Discharge from Active Duty (DD Form 214s).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 6 February 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and 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:

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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, it is in the interest of justice to review the application on its merits.

c. During Petitioner's enlistment processing he disclosed a history of marijuana and alcohol use to include two charges of driving under the influence (DUI) and was granted an enlistment waiver. Petitioner enlisted in the U.S. Marine Corps and completed an honorable period of active duty on 9 November 1999. On 10 November 1999, Petitioner reenlisted. On 25 January 2001, Petitioner was counseled regarding his failure to meet height/weight standards. On 9 March 2001, Petitioner received his first nonjudicial punishment (NJP) for disrespect towards a GYSGT/E-7 and failure to obey orders from a senior non-commissioned officer. On 27 April 2001, Petitioner was counseled concerning deficiencies in his performance and conduct since joining the Marine Expeditionary Unit. On 22 June 2001, Petitioner received a second NJP for a period of unauthorized absence (UA) totaling 28 days, for being incapacitated for the performance of his duties through prior wrongful indulgence in intoxicating liquor, and for failure to obey an order from a GYSGT/E-7. On 24 October 2001, Petitioner failed to follow his prescribed continuing care plan during alcohol rehabilitation treatment and returned to alcohol use. On 29 November 2001, he was again counseled regarding his failure to meet height/weight standards. On 20 December 2001, he received his third NJP for six specifications of UA from remedial physical training (PT). On 2 January 2002, Petitioner was counseled regarding his pattern of misconduct, administrative counseling entries, and NJP. Although afforded the opportunity to make a statement he did not. On 21 January 2002, Petitioner was involved in another alcohol related incident (driving under the influence). As a result, Petitioner was notified of his pending administrative separation by reason of pattern of misconduct (POM) and alcohol rehabilitation failure, at which time he waived his right to consult with military counsel and to have his case heard before an administrative discharge board. On 16 April 2002, Petitioner's CO recommended he be discharged with an Other Than Honorable (OTH) characterization of service by reason of POM and alcohol rehabilitation failure. The separation authority agreed with the recommendation and directed Petitioner be discharged. On 26 May 2002, Petitioner was so discharged. Upon his discharge, Petitioner was issued a DD Form 214 that did not reflect his period of Honorable service from 28 February 1996 through 9 November 1999.

d. Petitioner previously applied for an upgrade of his characterization of discharge to the Naval Discharge Review Board and this Board. Both requests were denied in 29 December 2004 and 1 February 2012, respectively.

e. Petitioner contends he incurred mental health concerns, specifically depression and generalized anxiety disorder, during military service which contributed to his misconduct. He adds his service record was exemplary before his mental breakdown as evidenced by his two Meritorious Promotions, Good Conduct Medal, and Letter of Appreciated. Petitioner submitted a personal statement and Department of Veterans Affairs documents for consideration. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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f. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with an advisory opinion (AO). The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline. While it is possible that his misconduct could be attributed to effects of excessive alcohol consumption, when evaluated during military service, he demonstrated an awareness of the potential for misconduct when he began to drink and was deemed responsible for his behavior. Post-service, the VA has granted service connection for a mental health condition that is temporally remote to his military service. Unfortunately, available records do not establish a nexus with his misconduct, his misconduct appears related to problematic alcohol use behavior that began prior to entry into military service and continued during military service. Additional records (e.g., 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.

The AO concluded, "it is my considered clinical opinion there is post-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and his aforementioned contentions. After 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 multiple NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative effect Petitioner's conduct had on the good order and discipline of his command. Finally, the Board concurred with the AO that there is insufficient evidence his misconduct could be attributed to a mental health condition. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 Petitioner the relief he requested or granting relief as a matter of clemency or equity.

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Notwithstanding the Board's decision to deny Petitioner's request to upgrade his characterization of service, the Board noted the error in Petitioner's DD Form 214 regarding the omission of his previous period of Honorable service. The Board determined this aspect of his record merits correction.

RECOMMENDATION:

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

A Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) be issued to Petitioner indicating his continuous honorable service for the period of 28 February 1996 through 9 November 1999.

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.

2/21/2023

[REDACTED]