



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

[REDACTED]  
Docket No. 7322-22  
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, "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 naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

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, and applicable statutes, regulations, and policies, to include the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency

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determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider and Petitioner response to the AO.

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.

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

c. The Petitioner enlisted in the Navy and began a period of active service on 24 July 1986. Petitioner's pre-enlistment physical, on 28 January 1986, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Petitioner disclosed pre-service marijuana use on his enlistment application.

d. On 6 June 1988, received non-judicial punishment (NJP) for a breach of the peace and underage drinking. Petitioner did not appeal his NJP. On 8 September 1989, Petitioner commenced an unauthorized absence (UA) that lasted for three days. On 18 September 1989, Petitioner received NJP for the wrongful use of a controlled substance (cocaine). Petitioner did not appeal his NJP.

e. On 20 September 1989, Petitioner was notified of administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his rights to consult with counsel, submit written statements, and to request an administrative separation board. Ultimately, on 30 October 1989, the Petitioner was discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

f. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner contended he incurred Post Traumatic Stress Disorder (PTSD) on active duty after witnessing two fatal accidents, in 1988, on board the USS [REDACTED] ([REDACTED]). Petitioner contended the Board must view his PTSD as a mitigating factor to the misconduct underlying his discharge and upgrade his characterization of service.

g. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO on 30 November 2022. The Ph.D. 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. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service and has been attributed to military service. Unfortunately, available records are not

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sufficiently detailed to establish a nexus with his misconduct, particularly given his pre-service behavior which appears to have 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 Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

h. In response to the AO, Petitioner additional medical evidence in support of his application.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record and notwithstanding the AO, the Board concluded that Petitioner's request warrants partial relief. The Board concluded under the unique factual circumstances of this case that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) was appropriate at this time.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of a nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of Petitioner's discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his drug-related misconduct outweighed any and all mitigation offered by such mental health conditions.

However, in light of the Wilkie Memo, and while in no way excusing or condoning the Petitioner's serious misconduct, the Board concluded that Petitioner merits a discharge upgrade to GEN and no higher. The Board determined relief was appropriate after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of extraordinary leniency and clemency.

Notwithstanding the corrective action recommended below, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board did not believe that Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required

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for an Honorable discharge, in this case a GEN discharge and no higher was appropriate given Petitioner's cumulative misconduct that was highly prejudicial to good order and discipline. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

The Board did not find a material error or injustice with the Petitioner's RE-4 reentry code, narrative reason for separation, or separation code. The Board concluded the Petitioner was assigned the correct reentry code, narrative reason for separation, and separation code based on the totality of his circumstances, and that these entries were proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in Petitioner's record was adequately addressed through the corrective action recommended below.

RECOMMENDATION:

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

That Petitioner's character of service, for the period ending 30 October 1989, be changed to "General (Under Honorable Conditions)."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

1/24/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]