



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

[REDACTED]
Docket No. 7361-22
2969-17
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 PTSD," of 3 September 2014
(c) USD memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or Traumatic Brain Injury (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
(e) USD 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

Encl: (1) DD Form 149 w/attachments
(2) Case summary
(3) Advisory opinion of 2 December 2022

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 by upgrading his discharge characterization to Honorable. See enclosure (2).

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, and references (b) through (f), which 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 24 February 2016 guidance from the Principal Deputy Under Secretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or

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traumatic brain injury (TBI) (Carson Memo), the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board considered enclosure (3), the 2 December 2022 advisory opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on the AO, he chose not to do so.

3. The Board, having reviewed all the facts of record pertaining to the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the 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. The Petitioner enlisted in the Navy and began a period of active service 21 September 1973. Petitioner served without incident until 7 April 1978. Petitioner received non-judicial punishment (NJP) for wrongfully selling 140 grams of marijuana. Petitioner was notified of the initiation of administrative separation proceedings, at which point he elected his right to consult with counsel, and waived his right to an administrative discharge board (ADB). On 7 August 1978, Petitioner's commanding officer recommended his retention in naval service, noting that Petitioner decided to discontinue from any involvement in drugs. Petitioner completed his first period of honorable service on 20 December 1978.

c. Petitioner reenlisted and commenced another period of active service on 21 December 1978. Petitioner received his second NJP, on 4 May 1981, for breach of peace. Petitioner completed his second period of honorable service on 20 October 1981.

d. Petitioner reenlisted and commenced a third period of active service on 21 October 1981. He received his third NJP, on 8 December 1983, for wrongful use of marijuana. As a result, Petitioner was notified of the initiation of administrative separation proceedings for misconduct due to drug abuse. On the same day, he elected his right to consult with counsel and a hearing of his case before an administrative discharge board (ADB). An ADB convened and determined Petitioner committed misconduct due to drug abuse, and recommended his separation with an Other Than Honorable (OTH) character of service. Petitioner's commanding officer concurred with the recommendation, noting the Petitioner's grossly violated the trust placed in him as a petty officer. On 9 January 1984, the separation authority approved and directed Petitioner's separation with an OTH character of service by reason of misconduct due to drug abuse. On 13 January 1984, Petitioner was discharged as directed.

e. Petitioner's third Certificate of Release or Discharge from Active Duty (DD Form 214) contains administrative errors. Block 12a. should reflect a date of entry of 21 October 1981, and Block 12b. should reflect a date of separation of 13 January 1984.

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f. Petitioner previously applied to this Board for an upgrade to his character of service. He was denied relief on 27 June 2018.

g. Petitioner claims he was experiencing mental health conditions during the time of his misconduct. He submitted a chronology of events which list his efforts to seek assistance, and states he was provided with none by his chain of command.

h. In light of the Petitioner's assertion of a mental health condition, the Board requested enclosure (3). The AO stated in pertinent part:

There is no evidence that Petitioner 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly given his history of substance use in 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 insufficient evidence of a diagnosis 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 consideration of all the evidence of record, the Board determined partial relief is warranted. Specifically, as previously discussed, the Board noted Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) for his third period of active service contains administrative errors and warrants correction.

Regarding Petitioner's request for a discharge upgrade, 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. These included, but were not limited to, his desire for a discharge upgrade and his contentions discussed previously. Based upon this 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 repeated drug related misconduct, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely negative effect it had on the good order and discipline of his command. Further, the Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. While the Board noted Petitioner's prior good military character, they ultimately concluded his repeated drug abuse was too serious to be offset by the mitigation evidence. Additionally, the Board concurred

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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 Sailor 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.

RECOMMENDATION

In view of the above, the Board directs the following corrective action: Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 13 January 1984, to reflect the following:

Block 12a.: 21 October 1981
Block 12b.: 13 January 1984

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

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

2/6/2023

