



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

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Docket No. 7579-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █  
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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 (Hagel Memo)  
(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 (Kurta Memo)  
(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 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Advisory Opinion of 11 January 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 by upgrading the characterization of service on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 6 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, and references (b) through (e). Additionally, the Board considered enclosure (3), an 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 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 began a period of active duty on 21 April 1988. On 7 September 1990, Petitioner received nonjudicial punishment (NJP) for larceny by stealing currency in the amount of \$170.00. On 4 March 1992, Petitioner was honorably discharged from service by reason of immediate reenlistment and commenced a second period of active duty service. On 5 February 1995, Petitioner was honorably discharged from service by reason of immediate reenlistment and commenced a third period of active duty service. On 5 October 2001, Petitioner received a second NJP for wrongful use of a controlled substance-cocaine, and overindulgence in intoxicating liquor. As a result, on 10 October 2001, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, he decided to waive his procedural rights. On 25 October 2001, the Petitioner's commanding officer recommended that he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service. On . 2 November 2001, the separation authority approved the recommendation and ordered that Petitioner be administratively separated from the Navy with an OTH discharge characterization by reason of misconduct due to drug abuse. On 30 November 2001, Petitioner was so discharged. Petitioner was issued a DD Form 214 upon his discharge that did not annotate his previous honorable periods of active duty.

c. Petitioner contends an upgrade to his discharge characterization would allow him to use his G.I. Bill benefits. Petitioner is currently enrolled in (LVN) school and would like to continue to (RN) school. Petitioner is improving his life and he is seeking to complete his goal. Petitioner states he spent years on self-medicated addiction and ended up suffering from Post-Traumatic Stress Disorder (PTSD) and depression. Petitioner completed his rehabilitation and has been clear for four and a half years. For purposes of clemency and equity consideration, Petitioner provided a health summary.

d. In light of the Petitioner's assertion of PTSD, the Board requested enclosure (3). The AO stated in pertinent part:

The Petitioner submitted a health summary from [REDACTED] Memorial Hospital whereby he was diagnosed with PTSD, Alcohol Dependence, Mood Disorder and Amphetamine and Other Psychostimulant Dependence. The health summary does not contain any notes or any further information about the diagnoses. 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, neither his personal statement nor evidence submitted are sufficiently detailed to establish clinical

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symptoms 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 that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, the Board noted that block 18 of the Petitioner's DD Form 214 does not reflect his previous periods of continuous honorable service. In this regard, the Board found an error exists in Petitioner's record and recommends that he be issue a Correction to Certificate of Released from Active Duty (DD Form 215) reflecting his periods of continuous honorable service.

Notwithstanding the corrective action recommended below, the Board found insufficient evidence of error or injustice to upgrade Petitioner's assigned 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 the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his desire for a discharge upgrade and his previously discussed contentions. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it included a drug offense. 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. Further, the Board considered the likely negative effect Petitioner's conduct had on the good order and discipline of his command. In addition, the Board applied liberal consideration to Petitioner's claimed PTSD condition, and the effect that it may have had upon his misconduct. However, the Board substantially agreed with the AO that there was insufficient evidence that Petitioner suffered from a mental health condition during his military service. 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.

#### RECOMMENDATION:

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

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

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[REDACTED]

Honorable Active Service: 21 April 1988 to 5 February 1995.”

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 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.

3/23/2023

[REDACTED]

Executive Director

[REDACTED]