



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

[REDACTED]
Docket No. 7982-22

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 23 Dec 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 to "Honorable" with reinstatement to the pay grade of E-3 and correction to his narrative reason for separation. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 February 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). In addition, the Board considered enclosure (2), an advisory opinion (AO) issued by a qualified mental health professional. Although Petitioner was provided an opportunity to respond to 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 28 May 1997. Just after his fourth month of service, he had his first alcohol related incident (ARI) and was subject to his first nonjudicial punishment (NJP), on 31 October 1997, for violation of Article 134 of the Uniform Code of Military Justice (UCMJ) due to drunk and disorderly conduct. Afterwards, he

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was counseled regarding retention and issued warnings that further misconduct could result in administrative separation.

c. Because of his ARI, Petitioner was screened for alcohol use and recommended for level I Impact training. However, he committed his second ARI within less than a week of completing the 20-hour Impact course on 24 November 1997.

d. Petitioner received his second NJP, on 8 January 1998, for the following UCMJ violations: 3 specifications of Article 91, for disrespect toward a senior chief petty officer, willful disobedience toward a senior chief petty officer, and disrespect toward a second class petty officer; Article 92, for failure to obey a lawful written order by leaving the oasis after consuming alcohol; 3 specifications of Article 128, for assault upon a person in the execution of law enforcement duties, assault consummated by battery due to the unlawful striking of a shipmate on the shoulder with an open hand, and simple assault upon a third class petty officer by swinging at him; and, Article 134, disorderly conduct and drunkenness.

e. In spite of having two ARIs in under 60 days, Petitioner's second alcohol use screening recommended level II outpatient treatment, which he began 24 January 1998 while serving restriction for his offense. During his period of restriction, he missed muster and received a third NJP for a violation of Article 86 for failure to go at the time prescribed.

f. On 7 March 1998, one month after completing his level II treatment, Petitioner was arrested by civilian police for public intoxication and for having an open container of alcohol. Although he did not face civil charges, the Drug and Alcohol Prevention Awareness officer recommended that he be processed for administrative separation due to alcohol rehabilitation failure.

g. Petitioner's notice of administrative separation processing included the basis of failure to maintain aftercare after successfully completing level I and level II treatment, misconduct due to commission of a serious offense, and misconduct due to pattern of misconduct. He requested a hearing before an administrative separation board, which convened on 14 August 1998. The administrative board found that all bases for separation were substantiated by a preponderance of the evidence, and recommended separation under Other Than Honorable (OTH) conditions. His statement and witness testimony, in relevant part, asserted that, because his misconduct was alcohol-related, he should have been afforded the opportunity to receive the more intensive level III in-patient treatment for his alcohol abuse rather than being separated after his level II treatment.

h. The recommendation for Petitioner's separation was forwarded on 9 December 1998, concurring with the findings of the administrative board. It noted that the required medical evaluation for alcohol dependence had not been completed due to Petitioner having been granted leave incident to his pending separation. Petitioner's discharge was approved for pattern of misconduct with a directed separation code of "GKA," and he was discharged in absentia on 22 December 1998.

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i. Following the report of Petitioner's discharge to Commander, Navy Personnel Command, (CNPC), CNPC sent a message to Petitioner's command reiterating that he was separated for pattern of misconduct with a correct separation code of "GKA" but that his Certificate of Release of Discharge from Active Duty (DD Form 214) erroneously cited code "HKK" for the reason of misconduct due to drug abuse. The message directed: "Issued DD21 to reflect correct SPD code of GKA. Change BLK 28 to: Pattern of Misconduct." However, although the correction was issued for the separation code, the narrative reason for separation was not changed to the correct reason.

j. Petitioner contends that the narrative reason for separation due to "drug abuse" is false. He also states, consistent with his argument before his administrative separation board, that his discharge was unjust because he was not offered appropriate rehabilitation services which he believes would have changed the course of his career and avoided further ARIs. He also believes that he should not have been reduced in rank due to his alcohol-related misconduct without receiving rehabilitation services first.

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

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. Unfortunately, he has provided no medical evidence to support his claims of PTSD or another mental health condition. Problematic alcohol use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. 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. Additional records (e.g., active duty or 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 PTSD or another mental health condition other than alcohol use disorder. There is insufficient evidence his misconduct could be attributed to a mental health condition other than alcohol use disorder."

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. The Board reviewed his application under the guidance provided in references (b) through (e) intended to be covered by this policy.

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The Board noted Petitioner's pattern of alcohol-related misconduct and, with respect to his request to upgrade his discharge, concurred with the AO that Petitioner received both level I and level II alcohol rehabilitation treatment services which, had he been amenable to such treatment, reasonably should have enabled him to avoid further ARIs rather than continuing to commit misconduct almost immediately after completing each treatment regimen. To the extent that Petitioner argues he should have been afforded the opportunity of level III treatment, the Board observed that his rehabilitation treatment recommendations were based on his self-report of the scope of his alcohol use and that he was provided treatment in accordance with his screening and applicable policies and regulations. As a result, the Board found insufficient evidence to support Petitioner's contention that his discharge was inequitable due to his receipt of level II rehabilitation treatment rather than level III. Likewise, as the AO noted that Petitioner was aware of the potential that he might commit misconduct when he began drinking, the Board found insufficient evidence that his NJP and punishment of reduction in rank was unjust. Accordingly, the Board concluded that the totality of Petitioner's in-service misconduct outweighed the favorable factors submitted for consideration and, therefore, determined that his request did not merit relief with respect to his characterization of service.

However, the Board observed that Petitioner's discharge was directed for pattern of misconduct and that his record contains clear evidence that the narrative reason of separation for drug use is, as Petitioner contends, erroneous. Accordingly, the Board determined that it appropriate to grant the requested relief with respect to changing his narrative reason for separation to remove the prejudicial reference to drug abuse.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 22 December 1998, his discharge was issued under the authority of "MILPERSMAN 3630600" with a separation code of "GKA" for the narrative reason of "Pattern of Misconduct."

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2/28/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]