



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

█
Docket No. 8001-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, █,
USN, XXX-XX-█

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory Opinion of 12 Jan 23

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 an upgrade of his characterization of service.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 1 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, 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:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation 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. Petitioner enlisted in the Navy and began a period of active duty on 17 June 1998. On 18 June 1998, Petitioner was issued an administrative remarks informing him that he was being retained in the naval service despite his fraudulent induction as evidenced by his failure to disclose (pre-service marijuana use) required basic enlistment eligibility information.

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- d. On 29 December 1998, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA).
- e. On 15 December 1999, Petitioner provided a statement to an investigating officer admitting to the purchase and use of steroids.
- f. On 5 January 2000, Petitioner received a second NJP for wrongful use of a controlled substance.
- g. On 6 February 2000, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. Petitioner advised of his procedural rights; elected his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB). An ADB convened, and found that based on the preponderance of the evidence, Petitioner committed misconduct due to drug abuse and recommended administrative discharge from the naval service with a General (Under Honorable Conditions) characterization of service and that the administrative discharge suspended for a period of 12 months.
- h. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) concurring with the ADBs recommendation. The SA approved the recommendation for administrative discharge. However, the SA did not concur with the recommendation for a suspension and directed Petitioner's General (Under Honorable Conditions) character of service discharge from the Navy. On 3 August 2000, Petitioner was discharged from the Navy with a General (Under Honorable Conditions) characterization of service by reason of misconduct due to drug abuse.
- i. Petitioner desires a correction to his naval record to qualify for benefits.
- j. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.
- k. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO 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. When evaluated, he denied substance use disorder symptoms. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service substance use behavior. 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.

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The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to active military service. There is insufficient evidence his misconduct could be attributed to PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice.

In regard to Petitioner's request for an upgrade of his characterization of service, the Board found no error in Petitioner's General (Under Honorable Conditions) characterization of service discharge for separation for misconduct due to drug abuse. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

The Board applied liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) through (d), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board did not believe that relief is warranted under the totality of the circumstances given the seriousness of Petitioner's misconduct. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved 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. Furthermore, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to active military service, and there is insufficient evidence Petitioner's misconduct could be attributed to PTSD. As the AO noted, Petitioner's personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service substance use behavior. In addition, the Board determined that an Honorable discharge was appropriate only if the service member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. The Board concluded by opining that significant negative aspects of Petitioner's active service outweighed the positive aspects and, even under the liberal consideration standards for mental health conditions, continues to warrant a General (Under Honorable Conditions) characterization. As a result, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service or granting clemency in the form of an upgraded characterization of service.

Notwithstanding the Board's determination that a discharge upgrade is not supported by the preponderance of the evidence, they concluded, purely as a matter of clemency, that Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a Secretarial Authority discharge in the interests of justice. However, the Board determined Petitioner's reentry code remains appropriate in light of his unsuitability for further

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military service. In recommending a Secretarial Authority discharge, the Board determined it adequately addressed any injustice in Petitioner's record.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting, for the period ending 3 August 2000, that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

3/21/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]