



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

[REDACTED]  
Docket No. 8149-22

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]  
[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 20 Jan 23  
(3) Rebuttal to AO of 27 Feb 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 that his discharge be upgraded along with changes to his separation and reentry codes. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 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). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO. Enclosures (2) and (3).

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 Marine Corps on 3 January 2005, serving honorably for multiple periods of service, with reenlistments on 1 July 2008, 11 July 2012, and, finally, 19 November

2016. He participated in Operation Iraqi Freedom from September 2005 through April 2006 and April 2007 through November 2007; he received initial outpatient alcohol abuse treatment in 2009.

c. On 10 October 2018, Petitioner accepted nonjudicial punishment (NJP) for misconduct under Article 86 of the Uniform Code of Military Justice (UCMJ) for unauthorized absences, violation of a recruit training order under Article 92, by calling recruits inappropriate names, and for two specifications of violations under Article 134, for inappropriate relations with a woman not his wife and for communicating obscene, threatening, disrespectful, and offensive statements to his wife. Petitioner was issued administrative counseling concurrent with his NJP. Of note, Petitioner's service record contains documents pertaining to the termination of his entitlement to a basic allowance for housing, to be effective on 2 January 2014, during his third period of enlistment, concurrent with his anticipated divorce from his estranged dependent spouse; however, records from Petitioner's fourth period of enlistment also reflect a 30 April 2019 dissolution hearing.

d. Petitioner was advised, on 10 November 2018, that he was not recommended for promotion to E-7 due to his recent NJP. He was subsequently relieved for cause on 7 January 2019 due to a loss of confidence in his ability to effectively perform recruit training.

e. In February of 2020, Petitioner suffered a head injury with a loss of consciousness after being struck by a motor vehicle and thrown approximately 20 feet away.

f. On 23 November 2020, Petitioner received alcohol use/abuse screening in connection with service following an offense of driving while intoxicated (DWI). He completed level II DWI rehabilitation treatment services, on 18 December 2020, with a diagnosis of alcohol use disorder in sustained remission.

g. Following level II treatment, Petitioner was again screened for alcohol use and recommended to participate in individual counseling sessions for a minimum of 6 months; however, he participated in bi-weekly outpatient group counseling beginning 11 February 2021.

h. Petitioner was placed into pre-trial confinement (PTC), on 30 June 2021, pending charges for three offenses of DWI, with two having occurred during that month. He was again screened for alcohol use and scheduled for intensive outpatient treatment.

i. On 8 November 2021, Petitioner was found guilty at a special court-martial (SPCM), pursuant to his pleas, for violations of three specifications of Article 113 of the UCMJ for drunk driving. He was sentenced to 90 days of confinement and released following his trial, having already served 131 days of PTC.

j. Pending additional charges for misconduct after his release from confinement, per the request of Petitioner's detailed defense counsel in light of the unusual and recurrent nature of Petitioner's misconduct notwithstanding numerous prior years of otherwise honorable service, a sanity board reviewed his mental health. On 23 March 2022, the sanity board found that he did

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have an in-service diagnosis of post-traumatic stress disorder (PTSD) with dissociative symptoms in addition to his severe alcohol use disorder, but that his misconduct was not the result of a severe mental disease or defect. The sanity board concluded that he was able to appreciate the nature and quality or wrongfulness of his conduct at the time of his offenses.

k. Three days later, Petitioner was arrested by civil authorities in [REDACTED] for driving on a suspended license and refusing a breathalyzer.

l. In addition to civil allegations, Petitioner was pending charges for violations of: Article 95, for disrespect toward a sentinel; Article 115, for communication of a threat; Article 128, assault upon a sentinel; and, Article 113, reckless operation of a vehicle. He signed a pre-trial agreement waiving his right to an administrative discharge board in return for disposition of his offenses via NJP, which took place on 29 March 2022.

m. During processing of his administrative separation, Petitioner submitted a statement on his behalf requesting that his entire career be considered and not just his most recent period of misconduct.

n. A memorandum summarizing the PTSD exam incident to Petitioner's administrative discharge assessed that PTSD did not appear to be a contributory factor to his misconduct nor did he appear to be suffering from dissociative symptoms at the time of his misconduct, although it included an additional diagnosis of Depressive Disorder.

o. Petitioner was separated, on 6 April 2022, under Other Than Honorable (OTH) conditions for the reason of misconduct due to commission of a serious offense. When his Certificate of Discharge or Release from Active Duty (DD Form 214) was issued, Petitioner's period of continuous honorable service, from to 3 January 2005 through 18 November 2016 during his first three enlistments, was erroneously omitted.

p. Petitioner contends that he served honorably for over 16 years of service through multiple honorable contracts and that he would like to seek to reenlist and continue his career in another service. He also believes he should be entitled to receive veterans' benefits for the physical and mental health issues which he suffers due to both combat service and noncombat injuries. He believes that his experience of traumatic brain injury (TBI) and/or his mental health issues diagnosed during his military service, to include his PTSD, merit consideration in mitigation of his misconduct. Petitioner submitted service records and awards, as well as health records, in support of his contentions.

q. Because Petitioner contends that TBI, PTSD, or other mental health conditions may have mitigated some or all of his misconduct, the Board also requested enclosure (2), the AO, for consideration. The AO stated in pertinent part:

There is evidence in the available service records that he incurred a head injury in military service. However, he was evaluated and it was determined that any residual symptoms from his head injury were not a factor in his misconduct. He

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was also evaluated and received treatment during military service and received mental health diagnoses of PTSD, Other Specified Trauma Related Disorder, Unspecified Depressive Disorder, Insomnia, and Adjustment Disorder. He received treatment and was carefully evaluated during military service, and it was determined that his misconduct was related to alcohol use disorder and no other mental health condition.

The AO concluded, "it is my considered clinical opinion there is evidence of TBI incurred during military service. There is evidence of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI, PTSD, or another mental health condition, other than his alcohol use disorder."

r. Petitioner submitted a rebuttal to the AO in which he requested the Board to take into consideration that his alcohol abuse was not a contributing factor to his misconduct on its own because it derived from his PTSD, other mental health issues, and TBI, and his lack of success in resolving his issues with prescribed medications.

#### 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 with respect to his period of continuous Honorable service prior to his final enlistment.

In this regard, the Board noted that the omission of Petitioner's period of continuous Honorable service from his DD Form 214 was contrary to regulation and, therefore, erroneous. Accordingly, the Board concluded that this error merits correction.

With respect to Petitioner's specific requests of relief, the Board reviewed the application under the guidance provided in references (b) through (e) intended to be covered by this policy. After thorough 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that Petitioner's conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and the in-service assessments that evaluated Petitioner's mental health diagnoses and determined that he was able to appreciate the wrongfulness of his misconduct, to include his own acknowledgment that his final DWI offense. As a result, although the Board favorably noted that Petitioner served for over 13 years without misconduct, to include multiple combat tours, the Board found that the totality of favorable matters in support of his request insufficient to outweigh the serious and repetitive nature of his military and civilian misconduct, which put both himself and others at risk. The Board further concurred with the observation expressed at the time Petitioner's defense counsel requested the sanity review in that his behavior, rather than reflecting that of a seasoned staff noncommissioned officer who should have otherwise been competitive for promotion to the grade of E-7/Gunnery Sergeant, instead reflected that which might have been expected of a first tour recruit ill-suited for further service. As a result, even in

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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.

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

RECOMMENDATION:

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) including a statement in the block 18, Remarks, identifying Petitioner's "Continuous period of Honorable service from 3 January 2005 – 18 November 2016" and also removing the statement "Not a final discharge and subject to active duty recall or annual screening."

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

4/3/2023

