



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

█  
Docket No. 8664-22  
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,  
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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 Post Traumatic Stress Disorder," of 3 September 2014 (Hagel Memo)  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or 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) USECDEF 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

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 to upgrade his characterization of service, to make other conforming changes to his DD Form 214, and to take other remedial action with Petitioner's service record.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 20 January 2023, and, pursuant to its regulations, determined that potential 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, to 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's response to the AO.

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. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the Navy and began a period of active service on 24 May 1990. Petitioner's pre-enlistment physical examination, on 31 January 1990, and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms. On 18 October 1990, Petitioner reported for duty on board [REDACTED] ([REDACTED]) in [REDACTED], [REDACTED].

d. On 31 May 1991, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA), and for insubordinate conduct toward a Senior Chief Petty Officer (E-8). Petitioner did not appeal his NJP. On 2 June 1991, the Petitioner's command issued him a "Page 13" counseling warning (Page 13) documenting his NJP. The Page 13 expressly warned Petitioner that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation.

e. On 26 November 1991, Petitioner received NJP for assault consummated by a battery, and for communicating a threat. Petitioner did not appeal his second NJP. On 17 June 1993, Petitioner received NJP for three separate specifications of insubordinate conduct. Petitioner did not appeal his third NJP.

f. On 17 June 1993, Petitioner's command notified him that he was being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct and commission of a serious offense. Petitioner waived his rights to consult with counsel, submit statements on his own behalf, and to request an administrative separation board. In the interim, on 23 June 1993, Petitioner's separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms.

g. Ultimately, on 16 July 1993, Petitioner was administratively discharged from the Navy for misconduct with an Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

h. As part of the review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's original contentions and the available records and issued an AO on 5 January 2023. The Ph.D. stated in pertinent part:

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

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. Post-service, he has provided evidence of diagnoses of MDD and alcohol use disorder (AUD). The symptoms of these two conditions are noted to overlap, which is unsurprising as alcohol is a depressant. 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. Records indicate continuous problematic alcohol use since 1993, which was the end of his military service. While it is possible that his misconduct could be attributed to effects of excessive alcohol consumption, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms of MDD during military service or provide a nexus with his misconduct. Additional records (e.g., complete mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion there is post-service evidence of a mental health condition (AUD) that may have been experienced during military service. There is insufficient evidence to attribute his diagnosis of MDD to military service. There is insufficient evidence to attribute his misconduct to a mental health condition other than a possible alcohol use disorder."

In response to the AO, you submitted additional arguments in support of your application.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request does not warrant relief with the exception of making potential minor administrative changes to his DD Form 214.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, Petitioner's various requests for relief and contentions that: (a) as a direct result of Petitioner's service, the VA diagnosed him with MDD, recurrent, moderate, and AUD with alcohol-induced mood disorder, (b) Petitioner's exemplary post-service accomplishments and conduct, (c) the Hagel and Kurta Memos expand protections for veterans whose adverse discharges were a result of the "invisible wounds" of mental illness, and (d) the Hagel and Kurta memos advise the Board to afford each veteran a reasonable opportunity for relief when the veteran's misconduct was prompted by mental illness. For purposes of clemency and equity consideration, the Board considered the evidence Petitioner provided in support of his application.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service, and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, even under the liberal consideration standard, the Board concluded there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of Petitioner's discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his cumulative misconduct outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

The Board determined that there was no convincing evidence in Petitioner's service or medical record of any traumatic incidents taking place outside of the expected experiences of a Sailor deployed aboard ship. The Board noted the AOs from April 2020 and February 2022 drafted for Petitioner's two previous BCNR petitions, respectively, reached the same conclusion: there was insufficient evidence to attribute Petitioner's misconduct to a mental health condition other than a possible alcohol use disorder.

The Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, 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. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that Petitioner's misconduct clearly merited his receipt of an OTH. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

The Board determined that a DD Form 214 is not a “living” document that is updated with every post-service organizational and/or institutional change. Given that Petitioner’s rate at the time of both his enlistment and his discharge from the Navy was entitled “Mess Management Specialist,” the Board did not find evidence of an error or injustice that warrants changing Petitioner’s rate to the Navy’s updated title of “Culinary Specialist” on his DD Form 214.

The Board concluded that the three NJPs in Petitioner’s record supported his administrative discharge and the subsequent issuance of the OTH characterization, and corresponding RE code and narrative reason for separation. The Board also determined that Petitioner did not provide sufficient evidence to establish that his NJPs were executed or administered erroneously or unjustly, and therefore each NJP and their respective punishments should remain in Petitioner’s service record. The Board found that the derogatory EPRs/performance evaluations should likewise remain. With respect to Petitioner’s request for disability retirement, the Board found that at the time of Petitioner’s discharge, on 16 July 1993, he did not meet the disability retirement criteria for transfer to the PDRL on the basis of unfitness for duty and was ineligible for disability consideration based on his misconduct based discharge that resulted in an OTH. The Board concluded that Petitioner’s DD Form 214 was properly issued after his administrative separation discharge processing, and that there was no error or injustice in the rank, narrative reason for separation, service credit, separation code, reentry code, foreign service computation, or length and nature of service.

Notwithstanding the discharge upgrade denial, the Board did note, however, that the [REDACTED] [REDACTED] in 1991 may have supported Operations Desert Shield and Desert Storm, respectively, which raised the possibility Petitioner may have met the proscribed eligibility requirements for certain other decorations, medals, badges, and/or campaign ribbons in addition to those already listed on his DD Form 214 in Block 13. Given that the BCNR is not an investigatory agency, the Board concluded that Commander, Navy Personnel Command (CNPC) would be in the best position to determine such eligibility.

Additionally, the Board noted that Block 11 on Petitioner’s DD Form 214 appears incomplete and/or inaccurate. The Board concluded that CNPC would be in the best position to determine the correct Block 11 entries based on Petitioner’s service.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of material errors warranting the following corrective action.

That CNPC review and verify Petitioner’s service record to make a determination of his potential eligibility to receive both/either:

1. Kuwait Liberation Medal (Saudi Arabia); and/or
2. Kuwait Liberation Medal (Kuwait).

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

That Commander, Navy Personnel Command review and verify Petitioner's service record and make the appropriate corrections to Block 11 of the DD Form 214 based on his primary specialty and his years and months in such specialty, if necessary.

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 16 July 1993, to reflect any changes to Petitioner's DD Form 214 as directed by CNPC.

Following any correction(s) to Petitioner's DD Form 214 for the period ending 16 July 1993 based on CNPC's review and recommendations, that all other information currently listed on such DD-214 remain the same and no other relief be granted.

That 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.

2/3/2023

