



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

[REDACTED]  
Docket No. 9083-22

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, "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 from General (Under Honorable Conditions) (GEN) to Honorable, and reinstatement to Petty Officer Third Class (E-4).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 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, 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 clemency

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
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determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider dated 1 March 2023.

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. Petitioner previously petitioned to the Navy Discharge Review Board and was denied relief on 1 April 1976.

d. The Petitioner enlisted in the United States Navy and began a period of active service on 24 July 1972.

e. On 27 December 1972, Petitioner had a medical examination during which he disclosed "recurrent dream of beginning to slash his wrists" that frightened him due to its realism. He was referred to a mental health evaluation. On 4 January 1973, the mental health professional notes the recurrent dreams of cutting his wrists and also notes that Petitioner was suffering from anxiety.

f. On 3 April 1973, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 116, for breach of peace by wrongfully engaging in a fist fight.

g. On 30 May 1974, Petitioner was found guilty at his second NJP of violating UCMJ Article 80, for attempted to start breach of peace, Article 89, for disrespect toward commissioned officer, Article 91, for disrespectful and threatening language to petty officer, Article 92, for failure to obey order from shore patrol, and Article 134, for interference with shore patrol in performance of duty.

h. On 30 January 1975, Petitioner was found guilty at his third NJP of violating UCMJ Article 117, for wrongfully use provoking words and gestures, and Article 89, for disrespect towards superior commissioned officer.

i. On 10 March 1975, Petitioner was served with notification that he was being processed for administrative separation (ADSEP) by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. He elected his right to consult with qualified counsel and to present his case at an administrative separation board. He subsequently waived his right to an ADSEP board.

j. On 14 March 1975, Petitioner was found guilty at his fourth NJP of violating UCMJ Article 86, for unauthorized absence (UA) from 25 February 1975 to 5 March 1975.

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

k. On 20 March 1975, Petitioner was discharged from the Navy with a GEN characterization of service due to unfitness and assigned an RE-4 reenlistment code.

l. On 10 January 1979, Petitioner had a 12-day psychiatric hospitalization and was diagnosed with Schizoaffective Schizophrenia with Paranoid Features and Alcoholism.

m. Petitioner contends that he incurred PTSD and other mental health concerns from racism that he experienced while onboard the ship and after witnessing the death of a shipmate. In support of his request for relief, Petitioner provided a September 2018 mental health assessment, which opined that “a medical observation of PTSD symptoms was initially diagnosed as schizophrenia,” and noted he “presented with symptoms of PTSD, Depression, Dysthymia underlying Major Depression and Anxiety.” Petitioner submitted an August 2018 mental health record noting a traumatic event in October 1972 in the [REDACTED] while “he was there for a day and a half, and while on the tarmac he saw dead and wounded American soldiers.” The evaluation listed a diagnosis of Substance use disorder in sustained remission. A diagnosis of PTSD was noted during an October 2018 follow-up appointment. Petitioner provided a November 2018 Department of Veterans Affairs (VA) Disability Benefits Questionnaire with a diagnosis of PTSD attributed to military service. He submitted a VA determination of service connection for PTSD.

n. As part of the Board’s review process, a qualified mental health professional reviewed Petitioner’s contentions and the available records and issued an AO dated 1 March 2023. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment. The absence of formal diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. Post-service, he received a formal mental health diagnosis fairly temporally close to his military service. Much later, the diagnosis has been re-conceptualized as PTSD. It is possible situational anxiety identified in service may now be considered unrecognized symptoms of PTSD. It is possible his disobedience, irritability, and UA could be conceptualized as behaviors consistent with PTSD symptoms. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would strengthen the opinion.

The AO concluded, “it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence that his misconduct may be attributed to PTSD.”

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner’s request warrants partial relief. While the Board noted Petitioner’s misconduct and does not condone his actions, it concluded that his PTSD sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board

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

determined the mitigation evidence outweighed the severity of his misconduct. In making this finding, the Board substantially concurred with AO that the situational anxiety identified during service may now be considered unrecognized symptoms of PTSD. The Board also agreed that it is possible that the Petitioner's disobedience, irritability, and UA could be conceptualized as behaviors consistent with PTSD symptoms. Accordingly, the Board concluded that a re-characterization of Petitioner's service to Honorable is appropriate and warranted in this case.

The Board, however, did not find an error or injustice with the Petitioner's reduction to E-2 (Seaman Apprentice) as a result of his NJPs. The Board concluded that the Petitioner was properly held accountable for his misconduct during service and, based on the totality of the circumstances, that his current rank of E-2 was proper and in compliance with all Department of the Navy and Marine Corps directives and policies at the time of his discharge. Therefore, the Board denied Petitioner's request for reinstatement to E-4 (Petty Officer Third Class).

#### RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 20 March 1975, the characterization of service was "Honorable."

That Petitioner be issued a new Honorable Discharge Certificate.

That no further changes be made to the record.

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.

3/21/2023

