



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

[REDACTED]
Docket No. 9092-22

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, "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
(3) Subject's naval record (excerpts)

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 and change his narrative reason for separation and separation code in light of current guidelines as reflected in references (b) through (e). Enclosures (2) and (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 April 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 references (b) – (e).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

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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 enlisted in the United States Navy and commenced active duty on 1 August 1996. On his enlistment application, Petitioner acknowledged pre-service marijuana use.

d. From 1 August 1996 to 28 January 2002, Petitioner completed a period of honorable service. He deployed on the [REDACTED] from January 2000 through June 2000. During this initial period of service, on 20 June 2001, Petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for five specifications of disobedience, and Article 128, assault. Petitioner did not appeal this NJP.

e. Petitioner immediately reenlisted and began a second period of service on 29 January 2002.

f. On 24 March 2005, Petitioner was found guilty at his second NJP for violating UCMJ Article 112(a), for two specifications of wrongful use and possession of marijuana. As a result, Petitioner's command initiated administrative separation proceedings by reason of "Misconduct-Drug Abuse." Petitioner waived his right to consult with qualified counsel and his right to present a case in his defense at an administrative separation board.

g. On 17 May 2005, Petitioner was discharged from the Navy with an Other than Honorable (OTH) characterization of service by reason of "Misconduct" and assigned an RE-4 reenlistment code.

h. Petitioner contends that he incurred PTSD "while deployed between January 2000 and June 2000...during a port call in Dubai," after being asked by a taxi driver "Do you love Allah? Do you want to meet Allah?" which made him feel threatened. Petitioner submitted July 2011 Department of Veterans Affairs (VA) psychiatric hospitalization records listing diagnoses of PTSD, Alcohol abuse, and Depressive Disorder Not Otherwise Specified (NOS). During the initial evaluation, on 20 July 2011, the Petitioner reported having "served in Iraq for two months...in 2005...having flashbacks since then." Petitioner stated he could hear "the 'terrorists voices from Iraq.'" But not until his later treatment appointment, on 28 July 2011, did the Petitioner report "an onset of severe anxiety...in 2000," similar to his claims in this review regarding the taxi ride. His provider noted provisional diagnoses of PTSD and Major Depressive Disorder, recurrent, severe with psychotic symptoms, stating additional information was needed to rule out bipolar disorder, or a mood disorder due to alcohol use or a general medical condition.

i. Petitioner also submitted a May 2012 VA disability decision denying service connection for anxiety disorder with depression, which noted "a complaint of depression...in December 2004 during your other than honorable period of service." In April 2022, the VA granted "service connection for anxiety disorder with depression...as related to the service-connected disability of tinnitus." In October 2022, the VA "determined that the service treatment records

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and post-service evidence contradict your statement(s) of a connection between your service and your claimed [mental health] condition, and find the other evidence is more credible...[that the] mental condition is based off secondary service connection related to...tinnitus.”

j. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner’s contentions and the available records and issued an AO dated 6 March 2023. The Ph.D. noted 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, the VA has granted service connection for a mental health condition, secondary to his tinnitus. Unfortunately, available records are not sufficiently detailed to establish clinical mental health symptoms in service or provide a nexus with his misconduct. The VA records, which cite reviewed service records, note a complaint of Depression in December 2004, which is insufficient to attribute his substance use, as it onset prior to that time. Additionally, VA records, which reviewed all available records, did not find a primary connection between his military service and his mental health condition. Finally, there are inconsistencies in the Petitioner’s report of his traumatic stressor in the records that make it difficult to establish a diagnosis of PTSD attributed to military service. 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.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of a mental health condition that has been attributed to service-connected tinnitus. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

k. For purposes of clemency consideration, the Board noted Petitioner provided documentation pertaining to post-service accomplishments relating to truck driving and aviation maintenance certifications.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner’s request merits partial relief.

After review of Petitioner’s official military personnel file (OMPF), the Board determined that Petitioner’s DD Form 214 contains an administrative error. Specifically, the Board noted Petitioner has a period of honorable service from 1 August 1996 to 28 January 2002, which is not reflected on his separation document. Applicable regulations authorize the language “Continuous Honorable Active Service” in Block 18 (Remarks) of the DD Form 214, when a

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service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization except "Honorable," as is the case at present. In this regard, the Board determined Petitioner's naval record shall be corrected to reflect his continuous honorable active service for the above referenced period.

In regard to Petitioner's request for an upgrade of his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b) through (e). These included, but were not limited to, Petitioner's desire for a discharge upgrade and change to his narrative reason for separation, in addition to his aforementioned contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board applied liberal consideration to determine whether relief is warranted. In this regard, the Board did not believe that relief is warranted under the totality of the circumstances. In making this finding, the Board considered the seriousness of Petitioner's misconduct, especially as it involved a drug offense. The Board concluded that Petitioner's misconduct showed a complete disregard for military authority and regulations, and seemed to be a continuation of his pre-service misconduct. Further, the Board also considered the likely negative impact his conduct had on the good order and discipline of his command.

In making this determination, the Board concurred with the advisory opinion that there was no evidence that Petitioner suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of his discharge. The Board highlighted that there are significant inconsistencies in the Petitioner's report of his traumatic stressor, which makes it difficult to establish a diagnosis of PTSD attributed to military service. Petitioner claims that his service in Iraq resulted in nightmares, although there is no evidence in the record to indicate that he ever served in Iraq. Then only after his hospitalization does he discuss the incident in [REDACTED]. Throughout his disciplinary processing, he never raised concerns of mental health symptoms that would have resulted in mental health referral. Petitioner's post-service evidence of mental health conditions are temporally remote, and the Board found it difficult to attribute his misconduct to a mental health condition. Therefore, after thorough review of the evidence, the Board concluded that Petitioner's misconduct was not due to mental health-related symptoms, rather, that his active duty misconduct was intentional and willful and demonstrated that he was unfit for further service. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 him relief as a matter of clemency or equity.

RECOMMENDATION:

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

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That Petitioner's naval record be corrected to show his period of service from "1 August 1996 to 28 January 2002" as "Honorable." Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: '1 August 1996 to 28 January 2002.'"

That no further changes be made to Petitioner's 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.

[REDACTED]

Executive Director
Signed by: [REDACTED]