



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

█
Docket No. 9170-22
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) 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 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 his discharge be upgraded to General (Under Honorable Conditions) (GEN) characterization of service.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 17 April 2023, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of her naval service records, and applicable statutes, regulations, and policies including 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 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. During Petitioner's enlistment processing he disclosed using lysergic acid diethylamide (LSD), marijuana, and cocaine and was granted an enlistment waiver. Petitioner enlisted in the Navy and began a period of active duty on 9 September 1992. On the same day, Petitioner was briefed on the Navy's drug and alcohol abuse policy. On 17 January 1993, Petitioner commenced a period of unauthorized absence (UA) which lasted eight (8) days. On 3 February

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1993, he received nonjudicial punishment (NJP) for the aforementioned UA and for missing ship's movement. On 17 February 1993, Petitioner was diagnosed as a drug abuser/dependent and recommended to attend Level III inpatient treatment. On 1 March 1993, he received a second NJP for the wrongful use of cocaine. On 1 March 1993, Petitioner was notified of his pending administrative separation proceedings as a result of his drug abuse, at which time he waived his right to consult with military counsel and to have his case heard before an administrative discharge board. On 10 March 1993, the separation authority directed Petitioner be discharged with an Other Than Honorable (OTH) characterization of service by reason of drug abuse. On 14 May 1993, he was so discharged.

d. Petitioner contends he was suffering from mental health concerns (MHC) during military service. Specifically, alcohol and substance abuse use disorders which contributed to his separation. He contents that: (1) recently, he has spoken to several younger members of the Armed Forces who are in his alcoholics anonymous (AA) group and they mentioned the Armed Forces does not necessarily "muster out" servicemen and women with OTH discharges for a first-time drug use/abuse but instead are given the opportunity to attend addiction treatment of some kind and upon successful completion return to their duty stations, (2) this was not an option for him in the early 1990s, although he was allowed to attend inpatient treatment for alcohol and drug addiction, he was still separated with an OTH, (3) since separating from the Navy he has struggled with alcohol addiction for many years, attending his last inpatient treatment for alcohol in 2007, (4) he has managed to stay sober and has completed five years of sobriety, (5) he has no criminal record or incidents with drugs post 1995 and has been an elementary and high school teacher for the past 14 years, (6) he has recently completed his doctorate degree in education at [REDACTED], and (7) he has changed his life for the better.

e. For purposes of clemency and equity consideration, Petitioner provided documentation in the form of character letters, medical documents, and copies of his [REDACTED] teaching license and Doctoral Degree transcript for consideration.

f. In connection with Petitioner's assertion that he was suffering from MHC during military service, which might have mitigated the circumstances of his discharge, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health professional who reviewed the Petitioner's request for correction to his record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. There is no evidence that he was diagnosed with another mental health condition in military service. Post service, he has received treatment for apparently unrelated mental health concerns with an onset that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service substance use that appears to have continued in 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.

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The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct may be attributed to a mental health condition, other than his diagnosed substance use disorder.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants full relief.

Notwithstanding the AO and Petitioner's record of misconduct, in light of reference (e), after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to GEN. In making this finding, the Board considered Petitioner's post-discharge efforts to rehabilitate from his substance abuse disorders, his successful academic accomplishments, and his contributions to society as a teacher. While the Board does not condone his misconduct that formed the basis for his discharge, they determined it was in the interests of justice to grant his request for an upgrade based on the mitigation evidence he provided.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board concluded Petitioner's narrative reason for separation remains appropriate. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new DD Form 214 indicating the character of service as "General (Under Honorable Conditions)."

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 Regulations, Section 723.6(e)), and

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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.

5/10/2023
[REDACTED]
Executive Director
Signed by: [REDACTED]