



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

█
Docket No. 0208-23

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, █

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 in light of current guidelines as reflected in references (b) through (e). Enclosures (2) and (3) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 8 May 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) through (e). In addition, the Board considered an advisory opinion (AO) provided by a qualified mental health professional 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:

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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 entered active duty on 20 December 1999.

d. On 14 April 2003, Petitioner completed a period of honorable service. Petitioner immediately reenlisted and began a second period of service on 15 April 2003.

e. He was assigned to the [REDACTED] from 26 May 2000 to 26 May 2003. In January 2003, the crew of [REDACTED] did a sea swap with the crew of [REDACTED] and completed a four month deployment in the Persian Gulf and participated in Escort Operations and Tomahawk Missile Strikes at the beginning of Operation Iraqi Freedom (OIF).

f. On 19 February 2004, Petitioner was absent without authorization from his appointed place of duty for a one day period.

g. On 1 November 2004, Petitioner was found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 112(a), for two specifications of wrongful use of a controlled substance (methamphetamine). Petitioner tested positive on two separate urinalysis. He was sentenced to one month confinement.

h. On 7 December 2004, Petitioner was absent without authorization from his appointed place of duty for a period of three days.

i. As a result of his drug abuse, Petitioner was notified of administrative separation processing. After Petitioner waived his rights associated with the administrative separation, on 10 December 2004, the separation authority directed his discharge for drug abuse with an Other Than Honorable (OTH) characterization of service. On 16 December 2004, Petitioner was so discharged and assigned an RE-4 reenlistment code.

j. Petitioner contends that he incurred Post Traumatic Stress Disorder (PTSD) from traumatic incidents during military service. He asserts that he was deployed on a ship adjacent to the [REDACTED] when it was attacked in November 2000. He explains that joining a new ship while at sea following the September 2001 terrorist attacks, witnessing the suicide of a friend, experiencing a chemical attack threat, and experiencing "the firing and striking of Tomahawk missiles from the ship" were also traumatic precipitants. Petitioner explains that his undiagnosed symptoms of PTSD resulted in his self-medication through substance use.

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k. 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 29 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence to attribute his misconduct to PTSD."

l. In response to the AO, Petitioner provided a [REDACTED] Correctional Health Care Services consult note dated 21 December 2022, in which he discusses his traumatic experiences. The Ph.D. reviewed the rebuttal evidence, to include the record of the December 2022 medical appointment in which petitioner discussed "nightmares and intense fears" associated with "trauma he experienced serving in the US Navy...witnessing [REDACTED] attacked by terrorists that resulted in the death of some US Sailors and his friend in the Navy committing suicide." The Ph.D. noted that no formal mental health diagnosis was assigned during this visit, therefore, the original AO remained unchanged.

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 20 December 1999 to 14 April 2003, which is not reflected on his DD Form 214. Applicable regulations authorize the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a 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.

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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). 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 two drug offenses. The Board concluded that Petitioner's misconduct showed a complete disregard for military authority and regulations, caused him to be unfit for duty, and put his fellow service members at risk. 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 AO 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 ship, the [REDACTED], was immediately behind the [REDACTED] when it was attacked in November 2000, and witnessing this attack caused his trauma. However, records show that the [REDACTED] was in port between deployments at the time the [REDACTED] was attacked. In another statement, Petitioner claims that he was on the [REDACTED] when this occurred, but records show that he was not assigned to that ship until January 2003 and that the [REDACTED] was also not present at the time of the attack. Petitioner gives additional examples of various traumatic stressors, but provides no evidence that he ever sought mental health treatment during service or post-service until the single medical consult that he obtained in August 2022.

Throughout his disciplinary processing, Petitioner 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:

That Petitioner's naval record be corrected to show his period of service from "20 December 1999 to 14 April 2003" as "Honorable."

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Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: '20 December 1999 to 14 April 2003'."

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.

5/10/2023

[REDACTED]