



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

■  
Docket No. 587-23  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ■■■■■  
■■■■■

Ref: (a) Title 10 U.S.C. §1552  
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(c) PDUUSD Memo of 24 Feb 16 (Carson Memo)  
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Naval record (excerpts)  
(3) Advisory opinion of 5 April 23

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 for an upgrade of his characterization of service to Honorable. Enclosures (2) and (3) apply.

2. The Board, consisting of ■■■■■ reviewed Petitioner's allegations of error and injustice on 12 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered enclosure (3), an advisory opinion from a qualified mental health professional which was considered favorable toward Petitioner.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Petitioner enlisted in the Marine Corps and began a period of active duty on 20 January 1969. He participated in multiple combat operations in the Republic of ■■■■■ in 1969 and was wounded in action in October 1969.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

b. On 11 August 1970, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA), a period totaling 20 days.

c. On 26 January 1971, Petitioner was convicted by a special court-martial (SPCM) of two specifications of UA totaling 74 days.

d. Between 4 June 1971 to 29 December 1971, Petitioner received three instances of NJP. Petitioner's offenses were failure to obey an order, UA, and absence from his appointed place of duty.

e. The record shows Petitioner submitted a written request for separation for the good of the service in lieu of trial by court-martial. Petitioner's offense consisted of one specification of UA from 30 June 1972 until 14 September 1972, totaling 76 days. Prior to submitting this request, Petitioner conferred with a military lawyer at which time Petitioner was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner admitted his guilt to the foregoing offense and acknowledged that his characterization of service upon discharge would be Other Than Honorable (OTH). The separation authority approved his request and directed his commanding officer to discharge him with an OTH characterization of service. On 26 October 1972, Petitioner was so discharged.

f. Petitioner contends that his "PTSD was a contributing factor" to his actions that caused his OTH discharge.

g. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is no evidence 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, the VA has granted service connection for PTSD attributed to combat. His UA and disobedience are all after his combat injury and it is possible his misconduct could be attributed to unrecognized symptoms of PTSD avoidance and irritability. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may 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 careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice.

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

The Board found no error in Petitioner's OTH discharge for separation for the good of the service in lieu of trial by court-martial. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (d).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, and there is post service evidence that his misconduct may be attributed to PTSD.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. Based upon this review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his mental health condition outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions).

Further, although not specifically requested by the Petitioner, the Board also determined, based on the same rationale, that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to Secretarial Authority in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board concluded by opining that certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record even under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

Finally, despite applying liberal consideration, the Board concluded Petitioner's reentry code should remain unchanged based on his unsuitability for further military service.

#### RECOMMENDATION

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 26 October 1972, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Directed by the Secretary of the Navy to Correct Official Records," the SPD code assigned was "JFF2," and the separation authority was "MARCORSEPMAN 6012g."

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

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

That no further changes be made to Petitioner's naval record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

4/27/2023

[REDACTED]  
Deputy Director  
[REDACTED]