



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

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Docket No. 760-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ■■■■■
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Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD 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 18 Sep 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 and change his separation code.

2. The Board, consisting of ■■■■■, reviewed Petitioner's allegations of error and injustice on 8 November 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to the AO, he chose not to do so.

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 regulation 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 Navy and began a period of active duty on 19 June 1984. After a period of continuous Honorable service that included two enlistment periods, Petitioner reenlisted on 16 August 1991.

d. On 11 June 1992, Petitioner was issued an administrative remarks (Page 13) counseling concerning deficiencies in his performance and conduct: Specifically, misconduct in the case of alcohol abuse as identified through command referral on 23 May 1992 by missing duty section and being late for watch. Petitioner was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation.

e. On 16 June 1992, the commanding officer formally informed Petitioner that he was identified as a drug or alcohol abuser and that he possessed potential for further useful naval service. However, to remain eligible for continued naval service he must participate in the Drug and/or Alcohol Program.

f. On 17 June 1992, Petitioner received non-judicial punishment (NJP) for failure to go at the time prescribed to his appointed place of duty.

g. On 25 September 1992, Petitioner completed Level II treatment with a moderate risk for further abuse.

h. On 25 February 1994, Petitioner was pulled over by civilian authorities for traveling 35 mph in a 25 mph speeding zone in his motor vehicle. During the process of collecting his license and registration, Petitioner admitted he had been drinking. As a result, Petitioner was given a field sobriety test in which he failed. Petitioner was subsequently arrested for speeding and driving under influence (DUI).

i. On 1 March 1994, Petitioner received a second NJP for operating a motor vehicle while drunk with a BAC of 0.14.

j. On 9 March 1994, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. Petitioner was advised of, and elected, his procedural right to consult with military counsel and to present his case to an administrative discharge board (ADB).

k. On 1 April 1994, Petitioner was referred and evaluated at Counseling and Assistance Center (CAAC) due to his driving while intoxicated, CAAC noted Petitioner appears to be dependent on alcohol as evidenced by: his usage of alcohol interfering with his responsibilities and safety, his increased tolerance of alcohol, unsuccessful efforts to control his usage of alcohol, excessive time involvement, lifestyle, and his usage of alcohol knowing it causes other problems. Additionally, Petitioner appeared to demonstrate symptoms of unresolved grief with regards to his deceased spouse. CAAC recommended Petitioner be administratively separated from the naval service via the Department of Veterans Affairs (VA) treatment facility.

l. On 12 April 1994, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct, and recommended that Petitioner be administratively separated from the Navy with a General (Under Honorable Conditions) (GEN) characterization of service.

m. On 22 April 1994, the commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) concurring with the ADBs recommendation. On 25 May 1994, Petitioner was offered in-patient treatment at the VA, and elected to accept treatment at the VA. Ultimately, the SA approved the recommendation for administrative discharge, and directed Petitioner's GEN discharge from the Navy by reason of misconduct due to commission of a serious offense. On 15 June 1994, Petitioner was so discharged.

n. Petitioner contends the following injustices warranting relief:

(1) He was separated from the service due to a second alcohol related incident within his command, a DUI in January of 1994, and a missing Shore Patrol watch in May of 1994. These acts led to his separation, and they are related and should be considered in his request; and

(2) He has applied for and has received service connected disability at a 50 percent rating for alcohol use disorder, a form of PTSD.

o. For purposes of clemency and equity consideration, the Board noted Petitioner provided a documentation from the VA and copy of his Bachelor's Degree.

p. 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:

During military service, the Petitioner was diagnosed with an alcohol use disorder. Post-service, the VA has granted service connection for a mental health condition. His service record is consistent with the VA's determination that alcohol use was secondary to other mental health concerns. His misconduct is related to his alcohol use, and it is reasonable to consider an underlying mental health condition contributed to his alcohol use. There is no evidence of a diagnosis of PTSD. 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 AO 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 may be attributed to military service. There is post-service evidence to attribute his misconduct to a mental health condition."

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.

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Although not specifically requested, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, reviewing the record liberally and holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board determined Petitioner's narrative reason for separation and separation code should be changed to Secretarial Authority. In making this finding, the Board took into consideration the AO that determined that post-service evidence exists to attribute his misconduct to a mental health condition.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service and reentry code remain appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service and the previously mentioned contentions raised by Petitioner in his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant the requested relief. In making this finding, the Board considered Petitioner's administrative counseling, involvement with civilian authority's, and multiple NJPs. The Board concluded, Petitioner's record reflected misconduct and behavior which clearly rendered Petitioner a burden to his command and likely adversely impacted the Sailors with whom he served. Further, the Board while the concurred with the AO that there is post-service evidence to attribute his misconduct to a mental health condition, the determined the severity of his misconduct outweighed the mitigation provided by his mental health condition. The Board noted Petitioner was assigned a GEN characterization, despite the severity of his misconduct and, more likely than not, already received a large measure of clemency from his command. As a result, the Board concluded significant negative aspects of Petitioner's active service outweighs the positive aspects and continues to warrant a GEN characterization and RE-4 reentry code. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting the requested relief as a matter of clemency or equity. 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 recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a DD Form 215 reflecting that, for the period ending 15 June 1994, Petitioner's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

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

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[REDACTED]

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.

11/28/2023

