



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

█
Docket No. 0765-23

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, XXX-XX-█

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 █, █, and █, 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. On 12 August 2002, Petitioner enlisted in the United States Navy. On his enlistment application, Petitioner acknowledged pre-service marijuana use.

d. On 21 March 2003, Petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 91, for three specifications of disobedience and disrespect, Article 92, for failure to obey an order, and Article 117, for provoking speeches.

e. On 10 October 2003, Petitioner was found guilty at NJP for violating UCMJ Article 90, for disobedience, and Article 92, for failure to obey a lawful order.

f. On 8 November 2003, Petitioner was found guilty at NJP for violating UCMJ Article 86, for three specifications of unauthorized absence (UA).

g. On 13 September 2004, Petitioner was found guilty at NJP for violating UCMJ Article 86, for UA, and Article 87, for missing movement.

h. On 10 March 2005, Petitioner was found guilty at NJP for violating UCMJ Article 86, for UA, and Article 113, for misbehavior of a sentinel.

i. On 12 March 2005, Petitioner's command initiated administrative separation proceedings by reason of commission of a serious offense and pattern of misconduct. Petitioner waived his right to consult with qualified counsel and his right to present a case in his defense at an administrative separation board.

j. On 18 April 2005, Petitioner was discharged from the Navy with an Other than Honorable (OTH) characterization of service by reason of "Pattern of Misconduct" and assigned an RE-4 reenlistment code.

k. Petitioner contends that he was suffering from undiagnosed symptoms of "schizophrenia/bipolar," which contributed to his misconduct. He provided evidence of a psychiatric hospitalization in January 2023. He submitted a November 2022 letter from a civilian psychiatrist describing psychiatric care since September 2012 for a diagnosis of Schizoaffective disorder, bipolar type. The letter acknowledged, "[i]n 2005,...[Petitioner] was in the Navy.... [His] mental health issues over the years have been significant." He provided a June 2013 letter from his civilian psychologist expressing the opinion "that his mental health conditions first appeared during his active military service.... [He] should have received a medical discharge due to these mental health issues." Petitioner submitted a December 2013 letter from a civilian psychologist stating that "his history reveals that he first began experiencing

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significant and severe mental health issues, a schizophrenic condition, and while in the Navy, but was reportedly never evaluated for such condition.”

1. 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 14 April 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 that was recognized during his military service. However, the Petitioner has provided post-service medical evidence in support of his claims, to include evidence of on-going mental health concerns from shortly after his separation from service to present day. It is reasonable to consider that his misconduct in service could be attributed to prodromal symptoms of his mental health condition.

The Ph.D. concluded, “it is my clinical opinion there is post-service evidence from civilian providers 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 review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner’s request merits relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner’s undiagnosed mental health symptoms that he suffered from during service mitigated the misconduct used to characterize his OTH discharge. The Board concluded that the Petitioner’s mental health-related conditions and/or symptoms were possible causative factors for the misconduct underlying his discharge. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner’s service as having been under OTH conditions, and that a discharge upgrade to “General (Under Honorable Conditions)” (GEN) is appropriate at this time along with certain conforming changes to his DD Form 214.

The Board also concluded that Petitioner’s narrative reason for separation, separation authority, and separation code should be changed to reflect “Secretarial Authority,” as the misconduct committed by the Petitioner was mitigated by his undiagnosed mental health conditions in service.

Notwithstanding the recommended corrective action above, the Board was not willing to grant a full upgrade to an Honorable discharge. The Board did not believe that the Petitioner’s record was otherwise so meritorious to deserve an Honorable discharge even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner’s conduct and/or performance outweighed the positive aspects of his military record. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be

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held accountable for his actions on active duty. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge was appropriate. Even in light of the Wilkie Memo, based on the totality of the circumstances, the Board concluded that the Petitioner merits a GEN characterization of service and no higher.

The Board did not find an injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of the circumstances, and that such reentry code was proper and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of his discharge.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 18 April 2005, his character of service was "General (Under Honorable Conditions)," his narrative reason for separation was "Secretarial Authority," the separation authority was "MILPERSMAN 1910-164," the separation code was "JFF."

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.

5/5/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]