



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

[REDACTED]
Docket No. 1086-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED],
USN, XXX-XX [REDACTED]

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) 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 that his naval record be corrected to upgrade his characterization of service to "Honorable," change his narrative reason for separation to "Secretarial Authority," and change his reenlistment code to "RE-1."

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], 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. 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 also considered the advisory opinion (AO) furnished by qualified mental health provider.

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. The Petitioner enlisted in the United States Navy and began a period of active service on 16 October 2001.

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d. On 29 December 2003, Petitioner was treated by a clinical psychologist and diagnosed with an adjustment disorder with depressed mood and chronic alcohol abuse. Petitioner presented with complaints of mood swings and thoughts of self-harm after his girlfriend gave birth and put their child up for adoption without his knowledge or consent.

e. On 22 March 2004, Petitioner was hospitalized in the psychiatric ward for a “nontoxic suicide attempt ...with limited insight” after taking 1000mg of Codeine and drinking so much that he blacked out. He stated that his primary stressor was unsuccessful attempts to obtain custody of his one year old daughter. He was diagnosed of ETOH abuse, occupational problems, and borderline/antisocial traits.

f. On 7 May 2004, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for three specifications of unauthorized absence (UA) totaling two days, and two specifications of Article 112(a), for the wrongful use of codeine and wrongful use of marijuana. Petitioner did not appeal his NJP.

g. That same day, Petitioner’s command initiated administrative separation proceedings by reason of misconduct due to drug abuse. After consulting with qualified counsel, he waived his right to an administrative separation board. On 10 June 2004, Petitioner was discharged from the Navy with an Other than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

h. Petitioner contends that he was suffering from mental health concerns during service due to personal stressors, including the adoption of his child without his consent and over his objection. He explains that he self-medicated with drugs due to his feelings of loss and lack of control with regard to regaining custody of his child. As part of the Board’s review process, a qualified mental health professional reviewed Petitioner’s contentions and the available records and issued an AO dated 13 April 2023. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition (Adjustment Disorder) and an alcohol use disorder. His misconduct did occur following this diagnosis. It is possible his UA and substance use could be attributed to an exacerbation of his mental health symptoms. Additional records (e.g., complete active duty or 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 in-service evidence of a mental health condition that may be attributed to military service (Adjustment Disorder). There is some evidence to attribute his misconduct to a mental health condition.”

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner’s request warrants partial relief. With regard to Petitioner’s request that his discharge characterization be upgraded, the Board reviewed Petitioner’s misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of references

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(b) through (e), after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions). The Board agreed with the AO that there was sufficient evidence that the Petitioner was diagnosed with a mental health condition (Adjustment Disorder) and an alcohol use disorder in-service. The Board concurred that Petitioner's UA and substance use could be attributed to an exacerbation of his mental health symptoms. Due to these mitigating factors, the Board concluded that a GEN characterization was appropriate in this case.

Notwithstanding the corrective action recommended above, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and how traumatic events during his service may have impacted his behavior. However, The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board highlighted that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even under the liberal consideration standards for mental health conditions, and that even though flawless service is not required for an Honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's drug related misconduct.

Additionally, the Board concluded Petitioner's narrative reason for separation and separation code should also be changed, based on the mitigating factors involved in this case. The Board believed Petitioner's assertion that he was self-medicating with drugs due to the loss of his child. As such, the Board felt that as a matter of clemency, his narrative reason for separation should be changed from "Misconduct – Drug Abuse" to "Secretarial Authority." Based on this same logic, the Board also felt that the reenlistment code should be changed from RE-4 to RE-1J.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating the character of service as "General (Under Honorable Conditions)," the separation authority as "MILPERSMAN 1910-164," the separation code as "JFF," the narrative reason as "Secretarial Authority," and the reenlistment code as "RE-1J."

No further changes are required 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.

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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.

4/20/2023	
[REDACTED]	
Executive Director	
Signed by: [REDACTED]	