



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

█
Docket No. 1582-23

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 1 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 to Honorable.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 27 September 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, that was considered favorable toward Petitioner.

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 23 May 2007. On 5 February 2009, he received summary court-martial (SCM) for 2 days, 6 days and 77 days unauthorized absence (UA), and failure to obey a lawful order.

d. As result, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct commission of a serious offense. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

e. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service for commission of a serious offense. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 6 March 2009, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct commission of a serious offense.

g. Petitioner contends the following injustices warranting relief:

(1) At the time of his discharge, he was suffering from schizophrenia and contends he was unable to think clearly about his actions that caused separation. He states he would have been successful in the military had it not been for his mental illness.

h. For purposes of clemency and equity consideration, the Board noted Petitioner provided medical records, shelter residency letter, his DD Form 214, SSDI benefits statement, and security training certificates.

i. 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:

The Petitioner submitted letters from homeless shelters and programs where he had been living post-service. He also submitted a benefits letter from the Social Security Administration, and outpatient records from [REDACTED] Medical Center and Aspire health where he had been seen for treatment of Schizophrenia from 2020 to present. Although there is no evidence that the Petitioner was diagnosed with a mental health condition or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition in service, it is possible that his misconduct could have been caused by prodromal symptoms of Schizophrenia. This is particularly true if he was experiencing the common symptoms of delusions, hallucinations or grossly disorganized behavior.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is sufficient evidence that his misconduct could be attributed 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 relief in the interests of justice.

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The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his mental health condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed MHC 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 civilian providers of a mental health condition that may have been experienced during military service, and it is possible that his misconduct could have been caused by prodromal symptoms of Schizophrenia. This is particularly true if he was experiencing the common symptoms of delusions, hallucinations or grossly disorganized behavior.

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. After thorough review, the Board found that Petitioner's MHC did have an effect on his misconduct and the mitigating circumstances of his MHC 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) (GEN).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the service member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. 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 GEN discharge characterization, and no higher, was appropriate.

Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to reflect a Secretarial Authority discharge. However, the Board concluded Petitioner's reentry code should remain unchanged based on his unsuitability for further military service. Ultimately, the Board determined that 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 new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 6 March 2009, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial

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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.

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.

10/6/2023

[REDACTED]