



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

██████████
Docket No. 1637-23

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) 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 28 Aug 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, through counsel, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting his characterization of service be upgraded to Honorable and his narrative reason for separation be changed to Secretarial Authority, with an associated change to his separation code.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 1 November 2023, and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval record, applicable statutes, regulations, and policies to include references (b) through (e). Additionally, The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, 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 reference (d).

c. Petitioner enlisted in the Navy and began a period of active duty on 15 August 1988. On 8 June 1989, he received non-judicial punishment (NJP) for four days unauthorized absence

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

(UA). On 5 February 1990, he again received NJP, for failure to obey a lawful general regulation. He was then administratively counseled and warned that any further deficiencies in performance or conduct may result in disciplinary action and processing for administrative separation. On 15 June 1991, on the tail end of a deployment in support of Operation Desert Storm (Desert Storm), he was on board the [REDACTED] during the eruption of [REDACTED], [REDACTED] and [REDACTED] – the evacuation of the [REDACTED] Navy and [REDACTED] Air Force Bases. He was involved in assisting base personnel and military dependent evacuees taken on board. After deployment, he received a third NJP, on 5 September 1991, for UA, disobeying a lawful order, and contempt toward a superior commissioned officer. This misconduct was followed by a civil conviction on 17 January 1992, for driving under the influence of alcohol, and a fourth NJP, on 30 January 1992, for UA and being drunk on duty.

d. On 12 February 1992, Petitioner was notified of charges against him at Summary Court-Martial. He consulted with counsel and consented to trial, where he pleaded guilty, on 20 February 1992, to wrongful use of marijuana, and was sentenced to confinement for one month. While confined, Petitioner participated in substance abuse programs including Alcoholics Anonymous, Basic Substance Abuse Class, and the Crossroads Program. On 24 March 1992, he was diagnosed as “not dependent” on alcohol or drugs, and recommended to attend Navy Alcohol and Drug Safety Action Program – Level 1 training. On 24 April 1992, Petitioner was notified he was being considered for administrative separation by reason of misconduct (pattern), commission of a serious offense, civil conviction, and drug abuse. He waived his rights, and although his Commanding Officer (CO) recommended a General (GEN) Discharge, “based on previous evaluation grade/performance,” he was discharged, on 18 May 1992, for Misconduct (pattern) with an Other Than Honorable (OTH) Discharge.

e. Petitioner contends he developed Post Traumatic Stress Disorder (PTSD) from his experiences while deployed, resulting in an abrupt change in his behavior, to include alcohol and drug abuse. He further contends, while he was in the Navy, he never received counseling and his symptoms of PTSD went unrecognized.

f. For purposes of clemency and equity consideration, the Board noted Petitioner provided Counsel’s legal brief in support of his application, a personal statement, various OMPF documents, a PTSD evaluation, a statement in support of a VA claim for PTSD, and five advocacy letters, primarily attesting to his time in service.

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 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, the VA has granted service connection for a diagnosis of PTSD that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to

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

establish a nexus with his misconduct, given his behavioral history prior to the traumatic precipitants. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

CONCLUSION

Upon review and consideration of all of the evidence of record, the Board concludes Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted his misconduct, and does not condone his actions leading to an OTH discharge, but also noted character of service is based, in part, on conduct and overall trait averages, which are computed from marks assigned during periodic evaluations. Petitioner's Overall Trait and Military Bearing averages were 3.63/3.71. Averages of 2.8/3.0 were required at the time of his separation for a fully honorable characterization of service. Therefore, in light of references (b) through (e), to include the CO's recommendation, after reviewing the record liberally and holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to "General (Under Honorable Conditions)" and his narrative reason for separation changed to "Secretarial Authority" with associated changes to his separation code and separation authority.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the 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 and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for PTSD, and that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate. Further, the Board concluded Petitioner's reentry code should remain unchanged, based on his unsuitability for further military service. 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 directs the following corrective action:

Petitioner be issued a new DD Form 214, for the period ending 21 May 1992, indicating the character of service as "General (Under Honorable Conditions)," his narrative reason for separation as "Secretarial Authority," and his separation code as "JFF."

No further changes be made to Petitioner's record.

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

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

4. It is certified quorum was present at the Board's review and deliberations, and 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.

11/8/2023

[REDACTED]

Executive Director
Signed by: [REDACTED]