



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

█  
Docket No. 2036-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,  
XXX-XX-█

Ref: (a) 10 U.S.C. §1552  
(b) SECDEF Memo of 3 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  
(3) Subject's naval record (excerpts)  
(4) Advisory Opinion dated 20 September 2023

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 General (Under Honorable Conditions) (GEN) discharge be upgraded in light of current guidelines as reflected in references (b) - (e). Enclosures (2) through (4) apply.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 1 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, and applicable statutes, regulations, and policies, to include references (b) - (e). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) prepared by a qualified mental health professional. Even though 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 regulations within the Department of the Navy.

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b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. After two periods of Honorable service, Petitioner reenlisted in the Navy on 1 May 1995. On 20 May 1997, he received non-judicial punishment (NJP) for unauthorized absence (UA). On 14 November 1997, he received NJP for failure to obey an order or regulation. On 30 July 1998, he was formerly counseled on missing one day of work due to an alcohol abuse incident and possible self-referral for alcohol abuse. On 16 November 1998, he was in a UA status for two hours and 31 minutes. On 28 December 1998, civil authorities convicted him of failure to appear in court due to writing worthless checks. On 8 January 1999, he was in a UA status for one hour and nine minutes. On 15 January 1999, he received NJP for failure to obey an order or regulation and UA totaling two hours and 15 minutes. On 4 February 1999, he received an additional NJP for drunkenness and incapacitated for the performance of duty. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to pattern of misconduct. After he waived his rights, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge with a General (Under Honorable Conditions) (GEN) characterization of service.

d. Unfortunately, all the documents pertinent to Petitioner's separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 2 March 1999 with a GEN characterization of service, his narrative reason for separation is "Misconduct (Pattern of Misconduct)," his separation code is "HKA," and his reenlistment code is "RE-4." Petitioner's previous period of continuous Honorable service from 8 September 1987 through 30 April 1995 were not documented on his DD Form 214.

e. Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service. As a result, enclosure (4) was requested from a mental health professional. The AO states in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from mental health symptoms while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. It is unusual that the Petitioner received excellent fitness reports for a significant period of time and then his behavior appeared to decompensate quickly. Although this could be evidence of prodromal symptoms Schizoaffective Disorder, more detailed evidence would be needed. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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The AO concludes, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

f. Petitioner contends he suffered from undiagnosed mental illness while serving in the Navy and he has been employed by the Department of Veterans Affairs for the last nine years. For purposes of clemency and equity consideration, the Board noted Petitioner provided documentation describing post-service accomplishments.

#### 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 partial relief. Specifically, the Board noted that the NJPs and civil conviction forming the basis of Petitioner’s GEN discharge technically occurred during his last enlistment that began on 1 May 1995. Thus, the Board concluded that an administrative change to Petitioner’s DD Form 214 should be made to reflect that his previous enlistments was completed without any serious adverse disciplinary action. The Board was aware that the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

In regard to Petitioner’s request to upgrade his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with reference (b) – (e). These included, but were not limited to, Petitioner’s desire to upgrade his discharge character of service and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner’s misconduct, as evidenced by his NJPs and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. The Board concluded that Petitioner was fortunate to receive a GEN discharge based on his history of misconduct. As a result, the Board concluded significant negative aspects of his active service outweigh the positives and continues to warrant a GEN characterization of service. 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 concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

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RECOMMENDATION:

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 2 March 1999, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 8SEP1987 TO 30APR1995."

Following the corrections to the DD Form 214 for the period ending 2 March 1999, that all other information as previously listed on such DD Form 214 remain the same.

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.

11/19/2023

