



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

█
Docket No. 2560-23

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, █

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
(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 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 23 October 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 a 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. Petitioner enlisted in the United States Navy and entered active duty on 16 December 1977.

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d. On 9 January 1979, Petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for two specifications of unauthorized absence (UA), Article 91, for disrespect, and Article 92, for failure to obey a lawful order and dereliction of duty.

e. On 31 October 1979, Petitioner was found guilty at NJP for violating UCMJ Article 91, for four specifications involving disrespect, failure to obey a lawful order, wrongful possession of marijuana, and resisting arrest, and Article 128, for two specifications of assault.

f. On 11 November 1980, Petitioner was found guilty at NJP for violating UCMJ Article 86, for five days of UA.

g. On 15 October 1981, Petitioner was found guilty at NJP for violating UCMJ Article 86, for two specifications of UA totaling eight days.

h. On 4 January 1982, Petitioner was separated at the End of Active Obligated Service (EAOS) with a General (Under Honorable Conditions) (GEN) and assigned an RE-4 reentry code.

i. Petitioner contends that he was suffering from undiagnosed symptoms of “Bipolar Disorder” during service, which contributed to his misconduct. He provided evidence of post-service psychiatric records from Butler Hospital where he was treated both as an inpatient and outpatient in 2000 and 2002. He was diagnosed with Bipolar Disorder and Alcohol Dependence by history. It was noted that he presented with “confusion and other cognitive impairments.” It was also noted that he had been experiencing “mood swings and irritability,” as well as grief following the death of a younger brother and going through his second divorce. He submitted VA notes from 2005/2006 timeframe whereby it is also documented that he was diagnosed with Bipolar I Disorder and had been treated with Lithium. Finally, he submitted extensive records from Quality Behavioral Health where he had been treated from 2000-2018. These notes also indicate a diagnosis of Bipolar I Disorder with more episodes of depression rather than mania as evidenced by frequent crying, malaise, sadness, hopelessness and vague SI. One note also indicates, “Question of mild mental retardation and borderline intellectual functioning.”

j. 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 11 October 2023. The Ph.D. noted in pertinent part:

Active duty medical records note diagnoses of Alcohol Dependence with treatment of Antabuse as well as two records which indicate that the Petitioner appeared anxious and “in a nervous state.” Although there is no evidence that the Petitioner was diagnosed with a mental health condition other than Alcohol Dependence while in military service, it is possible that his nervousness and maladaptive behaviors leading to misconduct were a result of prodromal symptoms of Bipolar I Disorder. For example, one of the criteria for Bipolar I Disorder is, “Excessive involvement in activities that have a high potential for

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painful consequences,” (Diagnostic and Statistical Manual of Mental Disorders, 5th ed.). Given the note of potential borderline intellectual functioning, this in combination with Bipolar I Disorder would likely significantly impair judgment.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that likely existed during military service. There is sufficient evidence that his misconduct could be attributed to a mental health condition (Bipolar I Disorder).”

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 GEN discharge. The Board concluded that the Petitioner’s mental health-related conditions and/or symptoms were possible causative factors for the misconduct that factored into his discharge characterization. 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 GEN conditions, and that a discharge upgrade to “Honorable” is appropriate at this time.

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, 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, and remains appropriate in light of his unsuitability for further military service.

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 4 January 1982, his character of service was “Honorable.”

That Petitioner be issued a new discharge certificate.

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.

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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.

10/30/2023

