



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

█
Docket No. 2937-23

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) 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 and change his narrative reason for separation to "Secretarial Authority" in accordance with references (b) through (e). Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 25 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's rebuttal to the AO.

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.

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c. The Petitioner enlisted in the United States Navy and began a period of active service on 11 January 1983.

d. On 14 March 1985, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for five specifications of unauthorized absence (UA) from an appointed place of duty, Article 92, for dereliction by failing to stand watch, Article 116, for breach of the peace at the petty officer's club in [REDACTED], [REDACTED], and Article 128, for assaulting civilian employees at the petty officer's club. Petitioner did not appeal this NJP and received formal counseling due to his misconduct.

e. On 3 May 1985, Petitioner received his second NJP for violating UCMJ Article 86, for three specifications of UA from an appointed place of duty and Article 92, for failure to obey an order by consuming alcohol while in a duty status. He did not appeal this NJP.

f. On 6 May 1985, Petitioner was notified that his command initiated administrative separation (ADSEP) processing by reason of misconduct due to commission of a serious offense and pattern of misconduct. He elected his right to consult with qualified counsel and his right to present a case at an ADSEP board.

g. On 19 June 1985, the ADSEP board convened and recommended that Petitioner be separated from the service with an Other Than Honorable (OTH) characterization of service. However, the Board recommend that his separation be suspended for six months. The Commanding Officer positively endorsed this request to Commander, Navy Personnel Command.

h. On 6 July 1985, Petitioner was convicted by the General District Court, [REDACTED], [REDACTED], for violations related to drinking in public and escape without force.

i. On 15 August 1985, Petitioner received his third NJP for violating UCMJ Article 86, for four specifications of UA from an appointed place of duty. He did not appeal this NJP.

j. On 9 September 1985, Petitioner was notified that his command again initiated administrative separation (ADSEP) processing by reason of "misconduct due to a pattern of frequent involvement of a discreditable nature with civil or military authorities. He elected his right to consult with qualified counsel and his right to present a case at an ADSEP board.

k. On 9 September 1985, the ADSEP board convened and again recommended a suspended separation. However, the Commanding Officer negatively endorsed this request to Commander, Navy Personnel Command.

l. On 19 November 1985, Petitioner was discharged from the Navy with an OTH characterization of service based on "Misconduct – Pattern – Frequent Involvement of a Discreditable Nature with Civil or Military Authorities" and assigned an RE-4 reenlistment code.

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m. Petitioner previously applied to the Naval Discharge Review Board for relief and was denied on 31 October 1986. This Board also denied Petitioner's previous applications for relief on 28 June 1994, 15 August 2000, and 1 December 2016.

n. In his current request for relief, Petitioner contends he incurred a severe alcohol use disorder (AUD), anxiety, attention deficit hyperactivity disorder (ADHD) and depression during military service, which contributed to his misconduct and separation from service. He was ordered to take Antabuse, which increased his sensitivity to alcohol. In support of his request, Petitioner provided evidence of drug rehabilitation therapy in December 1991 for mental health diagnoses of Cocaine Dependence, Alcohol Dependence, Nicotine Dependence, and Marijuana Abuse. He submitted Department of Veterans Affairs (VA) evidence of substance use disorder treatment and sustained sobriety. He provided a November 1992 letter from a VA clinician who stated that "alcoholism played a very major role in his discharge." He submitted a September 2022 letter from his VA clinician describing treatment for Generalized Anxiety Disorder (GAD) and Attention Deficit Hyperactivity Disorder, inattentive subtype (ADHD), and expressing the opinion "that the stress of working outside his rate...may have contributed to the development of clinically significant anxiety symptoms, which subsequently led to the use of alcohol to 'self-medicate.'" He provided evidence of service connection for treatment purposes for acquired psychiatric condition to include GAD, ADHD, and Depressive disorder (also claimed as Alcohol dependence, Cannabis dependence, and Cocaine dependence).

o. 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 8 August 2023. The AO noted in pertinent part:

There is no evidence of a mental health diagnosis during military service, although there is behavioral evidence of alcohol use disorder, as the Petitioner was apparently prescribed medication to prevent alcohol consumption. Post-service, the Petitioner has received treatment for alcohol and substance use disorder. The VA has granted service connection for mental health concerns associated with impaired concentration. A VA clinician has expressed the opinion that the Petitioner's mental health concerns contributed to increased alcohol use. Unfortunately, the Petitioner's statement is not sufficiently detailed to provide a nexus with all of his misconduct, particularly as he denied engaging in most of it during service. Additional records (e.g., complete post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

p. In response to the AO, Petitioner argued that he has a right to relief under the directives of the Kurta memo due to the AUD that he incurred while in service, which led to his

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misconduct. Further, he asserts that he does not have to link all of his misconduct to a MHC in order to warrant relief.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. The Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of reference (e), after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to an Honorable (HON) discharge. The Board recommended a characterization upgrade purely as a matter of clemency, as Petitioner provided evidence of post service conduct that warrants relief. Specifically, the Board was impressed with Petitioner's sobriety and his dedication towards helping others with similar problems. The Board did not make their finding based on Petitioner's claim of service connected mental health conditions. In making this determination, the Board substantially concurred with AO that the post-service diagnoses failed to provide a nexus to all of the underlying misconduct.

Notwithstanding the above corrective action, the Board concluded that the Petitioner was assigned the correct narrative reason for separation, separation code, separation authority, and reentry code based on the totality of the circumstances, and that this separation information was proper and in compliance with all Department of the Navy and Marine Core directives and policy at the time of his discharge. Although Petitioner provided a compelling clemency argument with regards to his characterization of service, it does not change the fact that he was appropriately separated from the service due to his misconduct. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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 19 November 1985, the characterization of service was "Honorable."

That he be issued a new Honorable discharge certificate.

That no further changes be made to the 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.

10/3/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]