



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

█
Docket No. 2947-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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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 17 Oct 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 and change his narrative reason for separation.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 6 December 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. Although 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 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 24 November 2003.

d. On 24 April 2006, Petitioner received non-judicial punishment (NJP) for wrongful use of amphetamine. As a result, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. 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 a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's GEN discharge from the Navy. On 19 May 2006, Petitioner was so discharged.

f. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 13 December 2007, based on their determination that Petitioner's discharge was proper as issued.

g. Petitioner contends that in a previous application for review, he provided evidence that he was under treatment for depression and explained that he was seeking to "self-medicate symptoms of a mental health condition" by taking a dose of Adderall, he was unaware that Adderall was an amphetamine when he took it.

h. 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 some evidence the Petitioner was experiencing symptoms of depression during military service, as he was referred for a mental health evaluation. However, as he did not follow up to schedule an appointment, it does not appear that he was formally diagnosed with a mental health condition in military service. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct. 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 some evidence of a mental health condition experienced during military service. There is insufficient evidence to attribute his misconduct 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 partial relief.

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[REDACTED]

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, reviewing the record liberally and holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board determined Petitioner's narrative reason for separation and separation code should be changed to Secretarial Authority. In making this finding, the Board concluded that describing Petitioner's current narrative reason for separation in this manner attaches a considerable negative and unnecessary stigma based on the circumstances of his misconduct.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service and reentry code remain appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service and the previously mentioned contentions raised by Petitioner in his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant the requested relief. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board considered the likely negative effect his misconduct had on the good order and discipline of his command. Further, the Board concurred with the AO that while there is some evidence of a mental health condition experienced during military service, there is insufficient evidence to attribute his misconduct to a mental health condition. As the AO explained, there is some evidence that Petitioner was experiencing symptoms of depression during his military service, as he was referred for a mental health evaluation. However, he did not follow up to schedule an appointment, and it does not appear that Petitioner was formally diagnosed with a mental health condition in military service, and he has provided no medical evidence in support of his claims. The Board noted Petitioner was assigned a GEN characterization, despite the severity of his misconduct and, more likely than not, already received a large measure of clemency from his command. As a result, the Board concluded significant negative aspects of Petitioner's active service outweighs the positive aspects and continues to warrant a GEN characterization and RE-4 reentry code. 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 determined 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 DD Form 215 reflecting that, for the period ending 19 May 2006, Petitioner's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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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.

12/18/2023

