



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

[REDACTED]
Docket No. 3362-23

Ref: Signature Date

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

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

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, include the Global War on Terrorism Medal, and add any missing duty assignments in accordance with references (b) through (e). Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], 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. Although Petitioner was afforded 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.

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 August 1999. Petitioner served honorably from 11 August 1999 to 15 January 2003, but received a non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 134, for unauthorized wearing of ribbons and warfare devices, on 11 January 2000. On 16 January 2003, Petitioner reenlisted for a second period of service.

d. Petitioner reports that, from 12 September 2003 to 12 November 2003, while attached to [REDACTED], he was deployed to [REDACTED], [REDACTED], in support of Operation Iraqi Freedom (OIF). Petitioner describes traumatic events which occurred during this period, to include the collection of damaged and bloody combat vehicles, as well as witnessing a helicopter crash.

e. On 26 May 2004, Petitioner received his second NJP for violating UCMJ Article 121, for larceny of a camera. Petitioner asserts that he stole the camera to get out of an upcoming deployment due to the trauma he experienced during his first deployment.

f. On 18 July 2005, Petitioner was notified that his command initiated administrative separation (ADSEP) processing by reason of misconduct due to commission of a serious offense. He elected his right to consult with qualified counsel and his right to present a case at an ADSEP board.

g. On 7 September 2005, the ADSEP board convened and recommended that Petitioner be separated from the service with an Other Than Honorable (OTH) characterization of service.

h. On 16 September 2005, Petitioner was discharged from the Navy with an OTH characterization of service based on commission of a serious offense and assigned an RE-4 reenlistment code.

i. Petitioner previously applied to the Naval Discharge Review Board for a discharge upgrade and was denied on 8 May 2014. This Board also denied Petitioner's previous application on 29 July 2015.

j. In his request for relief, Petitioner contends that during his deployment with [REDACTED] to [REDACTED] in 2003, he was exposed to several stressful incidents which caused his Post Traumatic Stress Disorder (PTSD). Specifically, he witnessed the nonfatal crash of a helicopter and later loading damaged or destroyed vehicles during the Iraq war. He contends that he began abusing alcohol to address his symptoms of undiagnosed PTSD, which ultimately led to his misconduct and separation. In support of his contentions, Petitioner submitted evidence of Department of Veterans Affairs (VA) service connection dated March 2023 and a list of mental health diagnoses of chronic PTSD, TBI, Nightmare Disorder, Recurrent Major Depression, and Adjustment Disorder. He also submitted evidence of treatment in 2023 and Traumatic Brain Injury (TBI) second evaluation in December 2014.

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k. 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 22 August 2023. The AO noted 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. Post-service, the VA has provided treatment for PTSD and TBI. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, as there is insufficient evidence to attribute larceny or wearing unauthorized ribbons to PTSD or TBI. 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 treatment of PTSD and TBI. There is insufficient evidence to attribute his misconduct to PTSD or TBI."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, 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 General (Under Honorable Conditions). The Board recommended a characterization upgrade purely as a matter of clemency, as Petitioner provided evidence of post service conduct that warrants relief. 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 of chronic PTSD, TBI, Nightmare Disorder, Recurrent Major Depression, and Adjustment Disorder failed to provide a nexus to the underlying misconduct.

Notwithstanding the recommended corrective action, the Board was not willing to grant a full upgrade to an Honorable (HON) discharge. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an HON discharge even under the liberal consideration standard for mental health conditions. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance greatly outweighed the positive aspects of his military record. The Board believed that, even though flawless service is not required for an HON discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions while on active duty. Lastly, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner merits a GEN characterization of service and no higher.

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Additionally, the Board concluded 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. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

Petitioner also requests that his record be updated to accurately reflect his authorization to wear the Global War on Terrorism (GWOT) Medal and that his missing duty assignments be added to his record of service. The Board concurs that there appears to be missing information from the Petitioner's service record that warrants a review by Navy Personnel Command.

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 16 September 2005, the characterization of service was "General (Under Honorable Conditions)."

That Petitioner's service record be reviewed to determine any missing awards, medals, and duty assignments and be updated accordingly.

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.

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

