



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

██████████  
Docket No. 3674-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
██████████

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)  
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)  
(d) USD Memo, 25 Aug 17 (Kurta Memo)  
(e) USECDEF Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Advisory Opinion of 21 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 his characterization of service be upgraded and his date of birth be corrected on his DD Form 214. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 1 November 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, and applicable statutes, regulations, and policies to included references (b) through (e). Additionally, the Board considered enclosure (3), an advisory opinion (AO) from a 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 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. Petitioner enlisted in the U.S. Navy and began a period of active duty on 19 June 2001. The Petitioner honorably fulfilled his service obligation, on 15 June 2005, and immediately reenlisted and began another period of active duty.

d. On 21 April 2006, Petitioner received non-judicial punishment for wrongful use of marijuana.

e. Unfortunately, some documents pertinent to the administrative separation are not in the 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. The Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 22 May 2006 with an Other Than Honorable (OTH) characterization of service, narrative reason for separation is "Misconduct – Drug Abuse," separation code is "GKK," and reenlistment code is "RE-4." Upon his discharge, Petitioner was issued a DD Form 214 that did not indicate his previous period of continuous Honorable service from 19 June 2001 to 15 June 2005.

f. In light of the Petitioner's assertion of Mental Health Condition, the Board requested enclosure (3). As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed the Petitioner's contentions and the available records and issued an AO dated 21 September 2023. The Ph.D. stated 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

g. Petitioner contends he was told at separation that his discharge would be upgraded to Honorable but he never received an updated DD Form 214. He also contended that his date of birth is incorrect on his DD Form 214. He also contended that the marijuana use was to control his severe PTSD he was experiencing. In support of his application, he provided a copy of his DD Form 214.

h. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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[REDACTED]

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, Petitioner's period of continuous Honorable service was not documented on his DD Form 214 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in 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 the Wilkie Memo. These included, but were not limited to, Petitioner's desire for a discharge upgrade and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of his misconduct and the fact it included 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. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute his misconduct to a mental health condition. As explained in the AO, Petitioner provided no evidence to support his claim. Furthermore, the Board noted Petitioner provided no evidence to support his contentions. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 him relief as a matter of clemency or equity.

Finally, the Board noted that the Petitioner did not provide any documentation to substantiate his claim that his date of birth was erroneous in his record. Therefore, based on evidence in his record that shows his date of birth on his DD Form 214 matches what is on his enlistment and reenlistment contracts, the Board determined insufficient evidence exists to support a change to his date of birth in his record.

#### RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 22 May 2006, indicating his continuous Honorable service for the period of 19 June 2001 through 15 June 2005.

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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[REDACTED]

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 Regulation, 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.

11/16/2023

[REDACTED]