



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

█
Docket No. 3961-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo 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) Advisory opinion of 29 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 that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214. Enclosure (2) applies.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 6 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (3), an advisory opinion (AO) furnished by 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. The Petitioner enlisted in the U.S. Navy and began a period of active service on

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10 August 1987. Petitioner's pre-enlistment physical examination, on 3 March 1987, and self-reported medical history noted no psychiatric and/or neurologic conditions or symptoms. On 17 April 1988, Petitioner reported for duty on board the [REDACTED].

d. On 10 November 1988, Petitioner received non-judicial punishment (NJP) for drunken driving (BAC 0.13). There is no record of any NJP appeal in Petitioner's service record. The same day, Petitioner's command issued him a "Page 13" counseling warning (Page 13) documenting his DUI NJP. The Page 13 expressly warned Petitioner that any further deficiencies in performance and/or conduct may result in disciplinary action and/or processing for separation. Petitioner did not submit a Page 13 rebuttal statement.

e. Over eighteen months later, on 18 May 1990, Petitioner received NJP for the wrongful use of a controlled substance (crystal methamphetamine). Petitioner did not appeal his second NJP.

f. Following the second NJP, on 21 June 1990, Petitioner's command notified him that he was being processed for an administrative discharge by reason of misconduct due to drug abuse, and misconduct due to a commission of a serious offense. Petitioner waived his rights to consult with counsel, submit statements on his own behalf, and to request an administrative separation board. Petitioner's separation physical examination and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. On 26 June 1990, a Navy Medical Officer (NMO) determined that Petitioner was not drug or alcohol dependent, and the NMO concluded that Petitioner was responsible and accountable for his actions. Ultimately, on 6 July 1990, Petitioner was discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code. On 7 October 2022, this Board denied Petitioner's initial petition for relief.

g. At the time of Petitioner's separation from the Navy, his overall active duty trait average was approximately 2.27 in "conduct" (military bearing/character) as assigned on his periodic evaluations. Navy regulations in place at the time of Petitioner's discharge recommended a minimum trait average of 3.0 in conduct/military behavior/military bearing to be eligible and considered for a fully Honorable characterization of service.

h. In short, Petitioner contended that he was suffering from mental health-related issues caused by certain traumatic experiences that occurred while on a 1988 deployment in the Persian Gulf. Petitioner further contended that his dysfunctional behavior did not occur until after he experienced the trauma of combat during his 1988 deployment. Petitioner argued, in part, that his undiagnosed mental health conditions were a causative factor for the behavior underlying his separation and OTH discharge, and he further argued that the Board must view his mental health conditions as mitigating factors to the misconduct underlying his discharge and upgrade his characterization of service.

i. As part of the 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 on 29 September 2023. The Ph.D. stated in pertinent part:

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In service, the Petitioner was diagnosed with alcohol and substance abuse. Post-service, the VA has granted service connection for PTSD. A civilian provider with a background with the VA has attributed the Petitioner's alcohol and substance use to self-medication of symptoms of PTSD. His misconduct did occur following his deployment. It is possible that problematic alcohol use shortly after his return from deployment could be considered a behavioral indicator of avoidance of PTSD symptoms. The Petitioner reported his substance use was during a pre-deployment morale-boosting event, and it is possible that his substance use could have been self-medication of unrecognized PTSD symptoms arising in anticipation of return to the deployment setting. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

The Ph.D. concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence to attribute his misconduct to PTSD."

CONCLUSION:

Upon review and liberal consideration of all the evidence of record and in light of the favorable AO, the Board concluded that Petitioner's request warrants relief.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that Petitioner's mental health condition and experiences mitigated the misconduct used to characterize his discharge. The Board concluded that Petitioner's mental health-related conditions and/or symptoms as possible causative factors in the misconduct underlying his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, and while not in any way condoning Petitioner's cumulative drug and alcohol-related misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) is appropriate at this time and no higher. Additionally, 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 a discharge upgrade to GEN is warranted with changes to his narrative reason for separation, separation code, and separation authority to reflect a Secretarial Authority discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if a Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. The Board also concluded

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that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Lastly, notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's RE-4 reentry code and was not willing to modify it. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and equitable.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

10/11/2023

