



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

██████████  
Docket No. 4037-23

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) 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 24 October 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. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 6 December 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 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 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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[REDACTED], USN, XXX-XX-[REDACTED]

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 26 March 1990. Upon entry onto active duty, he admitted to purchasing/possession of alcohol underage while in the Delayed Entry Program but a waiver was not required. The Petitioner fulfilled his service obligation, on 24 March 1994, and immediately reenlisted.

d. On 21 May 1997, the Petitioner was found guilty at special court-martial (SPCM) for possession of an open alcoholic beverage inside a vehicle on a military base, damaging a military police vehicle by kicking the door, driving erratically and interfering with other motorists while attempting to flee from military police, assault by placing his hands around his wife's throat, and disorderly conduct. He was awarded reduction in rate and confinement.

e. As result, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct commission of a serious offense. 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).

f. 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 an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy. On 9 March 1998, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct commission of a serious offense. Upon his discharge, he was issued a DD Form 214 that did not document his period of continuous Honorable service from 26 March 1990 to 24 March 1994.

g. Petitioner contends the following injustices warranting relief:

(1) He was in a vehicle accident where a friend was thrown from the vehicle and died and the driver was charged with manslaughter;

(2) He started experiencing survival guilt, PTSD, stress, and depression;

(3) Rather than seeking professional help at the time, he chose to self-medicate and started to drinking alcohol heavily; and

(4) He didn't have time to grieve because he was sent back to sea two weeks later and didn't attend the funeral.

h. In light of the Petitioner's assertion of mental health condition, the Board requested and reviewed enclosure (3). The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, which appears to be related to marital discord rather than

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symptoms of unrecognized PTSD. 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 a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement, two advocacy letters, and medical documents.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, as discussed previously, 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 Kurta, Hagel, and Wilkie Memos. 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. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of the misconduct and found that the conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute his misconduct to PTSD. As pointed out in the AO, there is no evidence that he was diagnosed with a mental health condition in military service.

As a result, the Board concluded significant negative aspects of his service outweigh the positive aspects and continues to warrant an OTH characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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 concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

#### RECOMMENDATION:

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

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Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 9 March 1998, indicating his continuous Honorable service for the period of 26 March 1990 through 24 March 1994.

No further changes be made to Petitioner's record.

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 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.

12/15/2023

[REDACTED]