



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

██████████
Docket No. 4065-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, ██████████,
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 28 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 to Honorable. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 8 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, applicable statutes, regulations, and policies to include references (b) through (e). Additionally, the Board also considered enclosure (3), an advisory opinion (AO) furnished by a qualified mental health professional. Although Petitioner was afforded an opportunity to submit a rebuttal, 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 February 2002. He was assigned to [REDACTED] on 22 November 2002.

d. On 8 January 2004, Petitioner tested positive for methamphetamine. He subsequently received non-judicial punishment (NJP) for wrongful use of methamphetamine and, on 26 January 2004, was notified of administrative separation board proceedings for drug abuse. He waived his rights and, on 29 January 2004, his Commanding Officer recommended separation with an Other Than Honorable (OTH) characterization of service. He was so discharged on 27 February 2004.

e. Post-discharge, Petitioner requested review of his case by the Naval Discharge Review Board (NDRB), requesting his discharge be upgraded to Honorable. He claimed he was not offered drug and alcohol treatment prior to discharge for drug abuse, that he received counseling for depression which was not helpful, and that his in-service performance had been good. Based on the seriousness of the offense, record of pre-service drug use, and lack of mitigating or extenuating evidence, the NDRB determined an upgrade was not warranted, and denied relief on 26 March 2009.

f. Petitioner contends the following injustice warranting relief: (1) While serving on board the [REDACTED], he developed and suffered from PTSD, and (2) if appropriate mental health action had taken place, he would have been able to finish his enlistment.

g. Petitioner submitted an advocacy letter from a [REDACTED] shipmate, and a letter from the [REDACTED], in support of his application.

h. In light of Petitioner's assertion of PTSD, 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 28 September 2023. The Ph.D. stated in pertinent part:

There is no evidence the Petitioner 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 presented evidence in the past of several mental health concerns diagnosed a few years after military service. Temporally remote to his military service, a mental health clinician has provided some evidence of a trauma-related mental health condition attributed to his service. In service, it appears that he denied significant interference or substance dependence, as he was recommended for a substance education course. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms of a mental health condition in service or provide a nexus with his misconduct, given his pre-service behavior and in-service report. 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.

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The Ph.D. concluded, "it is my clinical opinion there is some post-service evidence of a trauma-related mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded the Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request his discharge be upgraded, the Board noted Petitioner's misconduct, and does not condone his actions leading to an OTH discharge. However, in light of references (b) through (e), after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions) (GEN). Additionally, the Board determined that it was in the interests of justice to change Petitioner's basis for separation to reflect a Secretarial Authority discharge.

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

Petitioner be issued a new DD Form 214, indicating he was discharged on 27 February 2004 with a characterization of service of "General (Under Honorable Conditions)," narrative reason for discharge of "Secretarial Authority," authority of "MILPERSMAN 1910-164," separation code "JFF," and a reentry code of "RE-1J."

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/20/2023

