



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

█
Docket No. 4184-23

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) 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 w/attachments
(2) Naval record (excerpts)
(3) Advisory Opinion of 20 Sep 23

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 for an upgrade of his characterization of service.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 1 November 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). 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 regulation 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. Petitioner enlisted in the Navy and began a period of active duty on 22 September 2003.

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d. The record shows a period of unauthorized absence (UA) from 10 September 2004 to 24 November 2004, a period totaling 75 days. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file. 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. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), Petitioner was separated from the Navy on 1 December 2004, with a "General (Under Honorable Conditions) (GEN)" characterization of service, his narrative reason for separation is "Personality Disorder," his reenry code is "RE-4," and separation code is "JFX," which corresponds to convenience of the government – personality disorder.

e. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 6 November 2018, based on their determination that Petitioner's discharge was proper as issued.

f. Petitioner contends the following injustices warranting relief:

(1) He has faced many mental and physical challenges from the loss of shipmates, to family members in the service, as well as outside of service;

(2) He has utilized psychological counseling service from a licensed psychologist; and

(3) He has donated to many charities, such as [REDACTED], [REDACTED] and [REDACTED].

g. For purposes of clemency and equity consideration, the Board considered the evidence the Petitioner submitted in support of his application.

h. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. This diagnosis was confirmed independently by a VA psychologist. While the VA has also granted service connection for PTSD that is temporally remote to his military service, there is no evidence of error in his in-service diagnosis. His in-service behavior appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. 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 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 the circumstances of his separation to PTSD."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice. Although not specifically requested, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or personality disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214. However, the Board concluded Petitioner's reentry code should remain unchanged based on Petitioner's unsuitability for further military service due to his existing mental health condition.

With regard to Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service and the previously mentioned contentions raised by Petitioner in his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant the requested relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his long term UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board concluded, Petitioner's record reflected misconduct and behavior which clearly rendered Petitioner a burden to his command and likely adversely impacted the Sailors with whom he served. Further, the Board concurred with the AO that while 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 the circumstances of his separation to PTSD. As the AO explained, Petitioner's diagnosis was confirmed independently by a VA psychologist. While the VA has also granted service connection for PTSD that is temporally remote to Petitioner's military service, there is no evidence of error in his in-service diagnosis. Petitioner's in-service behavior appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Therefore, even in light of references (b) through (e) 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 determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that, for the period ending 1 December 2004, Petitioner's narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

11/18/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]