



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

█  
Docket No. 4293-23  
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER █, USN,  
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Ref: (a) 10 U.S.C. §1552  
(b) SECDEF Memo of 3 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 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)  
(4) Advisory Opinion dated 4 Oct 2023

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy filed enclosure (1) with this Board requesting that his Other Than Honorable (OTH) characterization of service be upgraded in light of current guidelines as reflected in references (b) through (e). Enclosures (2) through (4) apply.

2. The Board reviewed Petitioner's allegations of error and injustice on 11 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 (4), an advisory opinion (AO) prepared by a qualified mental health professional.

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.

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

c. Petitioner entered active duty with the Navy on 27 March 2001. On 17 May 2002, Petitioner received a psychiatry evaluation and was diagnosed with an adjustment disorder, personality disorder, and problems with social support. On 18 June 2002, a summary court-martial (SCM) convicted Petitioner of unauthorized absence (UA) totaling 25 days and missing ship's movement. On 24 June 2002, Petitioner was formerly counseled on his personality disorder. On 14 August 2002, he received non-judicial punishment (NJP) for UA totaling six days. On 16 August 2002, Petitioner received a medical evaluation which diagnosed him with an adjustment disorder with anxiety and depression, a personality disorder and lack of social support. After having a counseling session with the ship's medical officer and the duty chaplain, Petitioner was notified of pending administrative separation action by reason of misconduct due to a personality disorder, pattern of misconduct, and commission of a serious offense. After electing to waive his rights, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service due to commission of a serious offense. On 10 October 2002, he was so discharged.

d. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 2 August 2006, the NDRB denied his request after determining his discharge was proper as issued.

e. Petitioner contends that he incurred Post Traumatic Stress Disorder (PTSD) following making recommendations for targets and learning of collateral damage associated with the strikes. As a result, enclosure (4) was requested from a mental health professional. The AO states in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition. Post-service, the VA has granted service connection for PTSD. It is possible that his adjustment symptoms identified in service were re-conceptualized as symptoms of PTSD with the passage of time and increased understanding. It is possible to consider his UA and missing movement as behavioral evidence of avoidance associated with PTSD. Additional records (e.g., post-service medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

The AO concludes, "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 consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. While the Board noted Petitioner's misconduct and does not condone his actions, it concluded his PTSD condition sufficiently mitigated his misconduct to merit relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence outweighed the severity of his misconduct. In making this

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,  
[REDACTED]

finding, the Board substantially concurred with AO that there is evidence that Petitioner's misconduct may be attributed to PTSD. Accordingly, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been OTH and re-characterization to a General (Under Honorable Conditions) discharge is now more appropriate.

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 the member'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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, the Board concluded that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code remain appropriate in light of Petitioner's record of misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 10 October 2002, his characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to the record.

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 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.

10/24/2023

