



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

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Docket No. 4353-23
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,
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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) Case Summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion by Licensed Clinical Psychologist (Ph.D.), 5 Oct 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 that his naval record be corrected to upgrade his characterization of service in light of current guidelines as reflected in references (b) through (e).

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 20 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to respond to the AO, he chose not to do so.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. On 11 June 1982, Petitioner enlisted in the United States Navy.

b. On 15 July 1982, Petitioner was found guilty at non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 121, for theft of the personal property of another recruit. On 21 December 1982, Petitioner was found guilty at NJP for violating UCMJ Article 92,

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for disobedience, and Article 86, for 12 hours of unauthorized absence (UA). On 4 April 1983, Petitioner was formally counseled due to his disregard for regulations and authority.

c. On 26 May 1983, Petitioner was diagnosed with a tear in a knee ligament. In his request for relief, Petitioner argues that his chronic knee injury contributed to his mental health issues.

d. On 26 July 1983, Petitioner was found guilty at NJP for violating UCMJ Article 86, for a 12-hour period of UA. On 7 August 1983, Petitioner began a period of UA, and remained absent from his unit until 24 September 1983. Upon return from UA, on 15 December 1983, Petitioner was found guilty at NJP for violating UCMJ Article 112(a), for wrongful use of marijuana, Article 86, for 48 days of UA and jumping ship while in a restricted status, and Article 92, for disobedience and insubordination.

e. As a result of his misconduct, Petitioner was separated from the Navy, on 4 January 1984, with an Other Than Honorable (OTH) characterization of service, a narrative reason for separation of "Misconduct," and a reenlistment code of "RE-4."

f. Petitioner contends that he was suffering from undiagnosed symptoms of Post-Traumatic Stress Disorder (PTSD) during service due to continued racial harassment, which contributed to his misconduct. He provided evidence of post-service Department of Veterans Affairs (VA) decision of service connection for treatment purposes for PTSD.

g. As part of the Board 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 dated 5 October 2023. The Ph.D. noted in pertinent part:

There is no evidence that he 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. Post-service, the VA has granted service connection for PTSD that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, which occurred throughout his military service; and he claimed was the result of discriminatory practices or self-defense. 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 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 insufficient evidence to attribute his misconduct to PTSD." Enclosure (4).

CONCLUSION

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of reference (e), after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions) (GEN). Additionally, the Board concluded Petitioner's narrative reason for separation, separation

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code, and reentry code should be changed. Although the basis for separation was accurately listed as misconduct and Petitioner's record warranted an OTH characterization of service, Petitioner provided a compelling clemency argument supported by character letters.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and the stressors that he was suffering at the time he committed the misconduct. However, The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board highlighted that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. The Board felt that the Petitioner should have reported the racial harassment and tried to work with his command to gain mental health support and resources during this difficult time, vice choosing to go UA and using illegal drugs. The Board noted that even though flawless service is not required for an Honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's purposeful misconduct. Ultimately, the Board determined the recommended corrective action adequately addresses any injustice in Petitioner's record.

RECOMMENDATION

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that, on 4 January 1984, his character of service was "General (Under Honorable Conditions)," his narrative reason for separation was "Secretarial Authority," the separation authority was "MILPERSMAN 1910-164," the separation code was "JFF," and his reentry code was "RE-1J."

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.

12/21/2023

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