



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

██████████  
Docket No. 4489-23

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) USECDEF Memo of 25 Aug 2017 (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, 27 November 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 an upgrade of his characterization of service to honorable. Enclosures (2) and (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 26 January 2024 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.

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c. Petitioner enlisted in the Navy and began a period of active duty on 14 June 1990. Petitioner subsequently completed this enlistment with an Honorable characterization of service, on 12 June 1994, and immediately reenlisted.

d. On 20 December 1995, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) from his appointed place of duty. Petitioner was later counseled on two occasions for misconduct. Between 19 June 1996 to 18 March 1997 Petitioner received NJP on three occasions for five specifications of UA, disrespect toward a superior commissioned officer, dereliction in the performance of duties, and impersonating a non-commission officer by publicly wearing the rank of a Second Class Officer.

e. On 18 March 1997, a mental health update notes Petitioner's improvement in behavior and his participation in counseling sessions.

f. Consequently, Petitioner's Commanding officer recommended his discharge with a General (Under Honorable Conditions) (GEN) character of service for misconduct due to his pattern of misconduct and commission of a serious offense. Ultimately, Petitioner was discharged on 10 April 1997 with a GEN characterization of service for commission of a serious offense. However, his DD Form 214 did not reflect his previous period of continuous Honorable service from 14 June 1990 through 12 June 1994.

g. 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 1 June 1999, based on their determination that Petitioner's discharge was proper as issued.

h. Petitioner contends the following injustices warranting relief:

- (1) His condition of narcolepsy and depression went undetected while on active duty;
- (2) He was forced to be discharged after working in a toxic work environment and being denied a transfer to another base; and
- (3) He reenlisted and received a good conduct medal.

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

j. Because Petitioner based his claim for relief in whole or in part upon his mental health condition, his application and records were reviewed by a qualified mental health professional who provided the Board with enclosure (3), an advisory opinion (AO) for the Board's consideration. The AO stated in pertinent part:

The Petitioner submitted VA compensation and disability rating whereby he was found to be service connected for narcolepsy and Major Depressive Disorder. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological

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symptoms or behavioral changes indicative of a diagnosable mental health condition. There are no medical records available for review as contained within his service file, however it is unlikely that narcolepsy would contribute to misconduct. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

## 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. Specifically, as previously discussed, the Board noted Petitioner has a period of continuous Honorable service from 14 June 1990 to 12 June 1994 that is not documented on his DD Form 214. Applicable regulations authorizes the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214 and was separated with a discharge characterization except "Honorable." As a result, the Board determined Petitioner's naval record shall be corrected to reflect his continuous Honorable active 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, along with his statement regarding his period of continuous Honorable service. In addition, the Board considered the previously mentioned contentions raised by Petitioner in his application.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's characterization of service remains appropriate. 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, his desire for a discharge upgrade and the previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of Petitioner's misconduct and concluded his misconduct showed a complete disregard for military authority and regulations. Furthermore, the Board concurred with the AO that considered Petitioner's in-service mental health evaluation, and AO that there is insufficient evidence to attribute Petitioner's misconduct to narcolepsy or a mental health condition. As the AO noted, there were no medical records available in Petitioner's service record and his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

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While the Board carefully considered the evidence Petitioner submitted in mitigation and his prior periods of Honorable service, 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 recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner's naval record be corrected to show his period of service from "14 June 1990 to 12 June 1994" as Honorable. Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "14 June 1990 to 12 June 1994".

That no further changes be made to Petitioner's 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.

2/26/2024

[REDACTED]