



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

█
Docket No. 4708-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
█

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) USD Memo of 25 August 2017 (Kurta Memo)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service to Honorable and change his narrative reason for separation.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 19 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and Petitioner's response to the AO.

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.

c. The Petitioner enlisted in the U.S. Navy and began a period of active service on 4 December 1996. Petitioner's pre-enlistment physical, on 29 January 1996, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 29 March 1997, Petitioner reported for duty on board the █ in █

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[REDACTED]

d. On 23 November 1998, Petitioner received non-judicial punishment (NJP) for a single specification of the wrongful use of a controlled substance (marijuana). Petitioner did not appeal his NJP. On the same day, Petitioner was notified of administrative separation proceedings by reason of misconduct due drug abuse. On 29 November 1998, the Petitioner waived his rights to consult with counsel and to request an administrative separation board. Ultimately, on 25 January 1999, the Petitioner was discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

e. On 6 March 2012, the Naval Discharge Review Board (NDRB) denied Petitioner's initial application to upgrade his discharge. Petitioner did not proffer any mental health contentions in his NDRB application.

f. As part of the 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 4 December 2023. The Ph.D. stated in pertinent part:

The Petitioner submitted 3 letters of reference. In one letter, the author noted that the Petitioner claimed to have heard over the speaker on his ship that they were going to be under attack, and that he had a friend who jumped overboard and died. There is no evidence that the Petitioner deployed during a time of combat or to a hostile area while in service. Furthermore, there is no evidence or report of his friend having jumped overboard, nor did the Petitioner mention any of these events during separation proceedings. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 Ph.D. 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.

Following a review of Petitioner's AO rebuttal, the Ph.D. did not change or otherwise modify the original AO.

g. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner argued that his poor judgment was a means to cope with the undoubted stress that followed an imminent threat of war. Petitioner proffered he used marijuana as a means to calm his mind from the traumatic ordeal of hearing warning sounds that his ship was the immediate target for a war strike. Petitioner contended, inter alia, his service record is otherwise without any blemish, he has been punished enough and has worked exceptionally hard to overcome this stain on his life, and that he was separated from the Navy when mental health conditions were not afforded the treatment and care to which the Armed Forces are now committed to providing.

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CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

The Board initially determined that Petitioner's administrative separation was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that Petitioner's misconduct was intentional and willful and demonstrated he was unfit for further service. 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 not be held accountable for his actions.

Notwithstanding, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's drug-related misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) strictly on clemency and leniency grounds is appropriate at this time.

In granting his discharge upgrade, the Board cited the fact that the relative severity of Petitioner's specific misconduct offense has changed over time. The Board also cited that this was a single offense and Petitioner had no other counseling entries or documented misconduct in his entire service record.

However, the Board was not willing to grant an Honorable discharge characterization. The Board determined 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. The Board concluded by opining that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that a GEN discharge characterization was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and leniency, that the Petitioner

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only merits a GEN characterization of service and no higher.

Further, the Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

That Petitioner's character of service, for the period ending 25 January 1999, be changed to "General (Under Honorable Conditions)," and that no other changes be made to the DD Form 214.

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

1/26/2024

