



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

██████████
Docket No. 4756-23

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) 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) Advisory Opinion of 7 November 2023

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 discharge be upgraded.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 8 January 2024, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although provided an opportunity to respond to the AO, Petitioner 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 regulations within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, the statute of limitations was waived in accordance with the Kurta Memo.

b. Petitioner enlisted in the Navy on 12 December 1989 and commenced a period of active duty. He immediately reenlisted on 11 December 1995 and commenced a second period of

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active duty. On 9 March 1996, he received nonjudicial punishment (NJP) for the wrongful use of marijuana and was subsequently notified of his pending administrative separation processing by reason of drug abuse. Petitioner elected his right to consult with counsel and to have his case heard before an administrative discharge board (ADB). On 13 March 1996, Petitioner's medical evaluation found he was not dependent on alcohol or drugs. An ADB was convened on 8 May 1996 and found, by a vote of 3 to 0, that Petitioner committed misconduct and recommended he be discharged with a General (Under Honorable Conditions) (GEN) characterization of service for drug abuse. Petitioner was so discharged on 18 June 1996. Upon his discharge, he was issued a DD Form 214 that did not reflect his period of continuous Honorable service from 12 December 1989 through 10 December 1995.

c. Petitioner contends: (1) he incurred post-traumatic stress disorder (PTSD) during an incident in 1992 when his ship launched missiles into a Turkish Cruiser and, although he was not directly involved, he witnessed the process within the Combat Information Center and later assisted with one fatally burned casualty, (2) he spent nearly seven years with outstanding evaluations and served with honor, (3) his military record shows a history of excellence in service, (4) he was discharged for having THC (tetrahydrocannabinol – the main psychoactive component in marijuana) in his system, and (5) although there were times he was exposed to marijuana, "at the time it was one way to get sleep without a hangover the next day." For purposes of clemency and equity consideration, Petitioner provided Department of Veterans Affairs (DVA) rating documents but no documents describing post-service accomplishments or advocacy letters.

d. Based on Petitioner's assertions that he incurred PTSD during military service, which might have mitigated the circumstances of his separation, a qualified mental health professional reviewed his request for correction of his record and provided the Board with an AO. The AO stated 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 attributed to a 1992 event. Unfortunately, his available records are not sufficiently detailed to provide a nexus with his misconduct, particularly as he denied engaging in the misconduct. Additional records (e.g., post-service mental health records describing Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

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 his misconduct to PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrant favorable action in the form of partial relief. Specifically, the Board determined

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Petitioner's DD Form 214 should be corrected to document his period of continuous Honorable service.

With regard to Petitioner's request that his characterization of service be upgraded, 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 and the previously mentioned contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by his NJP, outweighed any mitigating factors present. In making this finding, the Board considered the seriousness of his misconduct and the fact that it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted marijuana use in any form is still against the Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered that despite a service member's prior record of service, certain serious offenses, even though isolated, warrant separation from the Navy to maintain proper order and discipline. Article 112a is one such offense requiring, at a minimum, mandatory processing for an administrative separation, which usually results in an unfavorable characterization of discharge. Lastly, the Board concurred with the AO that there is insufficient evidence to attribute his misconduct to PTSD. As explained in the AO, his available records are not sufficiently detailed to provide a nexus with his misconduct and he denied engaging in the misconduct that he is now claiming was affected by his mental health condition. As a result, the Board concluded significant negative aspects of Petitioner's service outweigh the positive aspects and continue to merit a GEN characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Hagel, Kurta, 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 directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 18 June 1996, indicating his continuous Honorable service for the period of 12 December 1989 through 10 December 1995.

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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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.

1/18/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]