



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

█
Docket No. 5032-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo) (Hagel Memo)
(c) PDUSD Memo 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 August 2017 (Kurta Memo)
(e) 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), 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 and to make other conforming changes to his DD Form 214 following his involuntary discharge for a personality disorder.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 23 February 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 (e). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider. Although Petitioner was given the opportunity to submit an AO rebuttal, 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 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 duty service on

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

6 July 2001. Petitioner's pre-enlistment physical examination, on 22 November 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 30 November 2001, Petitioner reported for duty with the [REDACTED] pre-commissioning unit in [REDACTED].

d. On 15 July 2003, Petitioner commenced an unauthorized absence (UA). Petitioner's UA terminated after one (1) day on 16 July 2003.

e. On 25 October 2003, Petitioner received non-judicial punishment (NJP) for UA when he failed to go to his appointed place of duty. Petitioner did not appeal his NJP. On the same day, Petitioner's command issued him a "Page 13" retention warning (Page 13) documenting his NJP. The Page 13 advised him that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation. Petitioner did not elect to submit a Page 13 rebuttal statement.

f. Between May and September 2004, Petitioner underwent a series of psychiatric evaluations. Ultimately, the Medical Officer (MO) diagnosed Petitioner with a personality disorder not otherwise specified with schizotypal and narcissistic features. The MO determined that Petitioner was not mentally ill, but manifested a long-standing disorder of character and behavior which was of such severity as to render Petitioner unsuitable for continued military service in the U.S. Navy. The MO recommended Petitioner's processing for an administrative separation. On the same day Petitioner's command issued him Page 13 documenting his personality disorder diagnosis. The Page 13 advised Petitioner that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation. Petitioner did not elect to submit a Page 13 rebuttal statement.

g. However, on 22 October 2004, Petitioner received NJP for the larceny of certain items from the Navy Exchange. As punishment, Petitioner received a reduction in rank to E-3 and did not appeal his NJP.

h. Based on Petitioner's misconduct, his command initiated administrative separation proceedings by reason of misconduct due to a pattern of misconduct, and by reason of convenience of the government on the basis of his diagnosed personality disorder. Petitioner's command processed him for an administrative separation using "notification procedures," which meant that Petitioner was not entitled to request an administrative separation board to hear his case, but the least favorable discharge characterization he could receive was General (Under Honorable Conditions) (GEN). On 22 October 2004, Petitioner waived in writing his rights to consult with counsel, submit a written statement for consideration, and to General Courts-Martial Convening Authority review of his proposed separation. Ultimately, on 12 November 2004, Petitioner was discharged from the Navy with a GEN discharge characterization and assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Personality Disorder."

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

i. On 22 October 2009, the Naval Discharge Review Board (NDRB) denied Petitioner's discharge upgrade application. The NDRB determined that Petitioner's discharge was proper as issued and that no changes were warranted.

j. Petitioner's Enlisted Qualifications History (EQH) (NAVPERS 1070/604), noted in block 11 that he was entitled to only the National Defense Service Medal and no other awards. Petitioner's DD Form 214 in block 13 reflects his NDSM and no other authorized awards, medals, badges, citations, and campaign ribbons.

k. 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 14 December 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated over multiple appointments. His personality disorder diagnosis was conservatively applied and based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no medical evidence to support his claims. It is difficult to consider how PTSD or another mental health condition would account for his misconduct, particularly as larceny is not a typical symptom. Additional records (e.g., in-service or 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 some in-service evidence of a mental health condition that may be attributed to military service (Adjustment Disorder). There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

CONCLUSION:

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

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an Honorable discharge characterization or any other requested relief. 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 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 an underlying basis of his discharge. As a result, even under the liberal consideration standard the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. 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 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 noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that Petitioner's diagnosed personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in his misconduct because it did not impair his ability to be accountable for his actions or behaviors. The Board also determined the record clearly reflected that Petitioner's misconduct was intentional and demonstrated he was unfit for further service.

Additionally, 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 even under the liberal consideration standards for mental health conditions, and that even though flawless service is not required for an honorable discharge, in this case only a GEN discharge characterization was appropriate. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading Petitioner's characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, the Board concluded that Petitioner only merits a GEN characterization of service and no higher.

The Board also did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Further, the Board denied Petitioner's request to restore his rank back to E-4 that was reduced as a result of his October 2004 NJP. The Board determined no material error or injustice occurred at his NJP hearing, and that the punishment was not unjust or disproportionate to the larceny offense Petitioner committed.

Additionally, the Board denied Petitioner's request to annotate his EQH with certain specialized training. Should Petitioner be able to provide evidence to the Board of his completion of certain training courses/instructions, service schools, and/or correspondence courses, the Board will revisit such a request upon the filing of a new DD Form 149 accompanied by the requisite substantiating documentation.

Finally, the Board denied Petitioner's request to add a basic the marksman qualification to his service record. The Board noted there is no evidence in Petitioner's service record to indicate Petitioner qualified as a marksman with either the pistol or rifle while he was on active duty.

RECOMMENDATION:

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

That Petitioner's narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF."

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.

2/28/2024

