



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

█
Docket No. 5518-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
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Ref: (a) 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 with attachments
(2) Case Summary
(3) Subject's naval record (excerpts)

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 from Other than Honorable (OTH) to either Honorable (HON) or General (Under Honorable Conditions) (GEN), and change his narrative reason for separation to "Secretarial Authority," in light of current guidelines as reflected in references (b) through (e). Enclosures (2) and (3) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 29 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to Petitioner and Petitioner's rebuttal.

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.

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c. On 11 January 1999, Petitioner enlisted in the United States Navy.

d. On 18 July 2002, Petitioner received medical treatment wherein he reported “periods of depression at intervals for many years” and disclosed a family history of depression. He was referred for a psychological evaluation and possible medication treatment.

e. On 14 May 2003, Petitioner received a pre-separation physical, and although he disclosed “occasional depression,” he was found physically qualified for separation.

f. On 19 June 2003, Petitioner was discharged from the Navy with an OTH characterization of service by reason of “Misconduct – Drug Abuse” and assigned an RE-4 reentry code.

g. In his request for relief, Petitioner contends that he was suffering from mental health issues during service, due to personal and family stressors, which contributed to one-time marijuana use and subsequent separation from service. He asserts that he was suffering from occasional depression due to the stress, which is what drove him to self-medicate through marijuana use. In support of his request, Petitioner provided a March 2021 physical exam listing a diagnosis of Generalized Anxiety Disorder, a March 2018 diagnosis of Anxiety in the context of atrial fibrillation, and records from April to June 2018, noting a history of chronic anxiety. 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 December 2023. The Ph.D. noted in pertinent part:

Although the Petitioner reported symptoms of depression during military service, 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. The “occasional depression” symptoms reported during his separation physical were not deemed sufficiently interfering to preclude separation from service. His post-service medical evidence is temporally remote to his military service, and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to a nexus with his misconduct, which he claims was one-time substance use. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

h. On 4 January 2024, in response to the AO, Petitioner provided additional argument about the underlying diagnosis as applied to reference (d).

i. The Ph.D. reviewed the Petitioner’s response and concluded that as no new medical evidence was provided, the original opinion remained unchanged.

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[REDACTED]

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner's request merits relief.

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) and his narrative reason for separation should be changed to "Secretarial Authority" with corresponding codes and authority. The Board recommended these changes as a matter of clemency, based on the Petitioner's post-service accomplishments. The Board gave weight to Petitioner's character statements, which summarized his contributions to family and community.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an HON discharge. In keeping with references (b) through (d), the Board gave liberal and special consideration to Petitioner's record of service and his assertion that mental health issues impacted his conduct. However, the Board agreed with the AO 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. There was no evidence in the record that Petitioner was diagnosed with a mental health condition during service, and his "occasional depression" was not deemed sufficient to preclude his separation from the Navy. The post-service documents he has provided were temporally remote and did not establish a sufficient nexus to the underlying misconduct. The Board highlighted that an HON 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. They noted that even though flawless service is not required for an HON discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's misconduct.

Additionally, the Board did not find an injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of the circumstances, and that such entry was proper and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of his discharge. Ultimately, the Board concluded that 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 be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows, on 19 June 2003, he was discharged with a characterization of service of

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[REDACTED]

“General (Under Honorable Conditions),” with a narrative reason for separation of “Secretarial Authority,” under the separation authority of “MILPERSMAN 1910-164,” and a separation code of “JFF.”

That no further changes be made to Petitioner’s record.

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.

2/8/2024

