



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

██████████
Docket No. 7003-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,

██████████

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
(2) Case summary
(3) Advisory Opinion of 16 January 2024

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 in his characterization of service. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 6 March 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 included references (b) through (e). Additionally, the Board considered enclosure (3), an Advisory Opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on 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 regulations within the Department of the Navy.

b. Although the enclosure was not filed in a timely manner, the statute of limitation was waived in accordance with reference (d).

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[REDACTED]

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 27 December 1973. Petitioner received non-judicial punishment (NJP), on 6 November 1974, for disrespect to a superior commissioned officer.

d. Unfortunately, documents pertinent to Petitioner's administrative separation are not in the official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 11 November 1974 with a General (Under Honorable Conditions) (GEN) characterization of service. Petitioner's DD Form 214 does not annotate the narrative reason for separation, separation code and the reenlistment code. However, he was counseled on the date of his discharge that he was not recommended for reenlistment based on his discharge by reason of unsuitability.

e. Petitioner contends he served honorably during his enlistment and that he was experiencing some anxiety at the time he was discharged with a General.

f. In light of the Petitioner's assertion of Mental Health Condition, the Board requested enclosure (3). 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. He has provided no medical evidence in support of his claims. Unfortunately, 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) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to PTSD."

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined 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 unsuitability. 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 possibly related to a mental health condition and that certain remedial administrative changes are warranted to the DD Form 214. However, the Board determined Petitioner's non recommendation for reentry remains appropriate in light of his unsuitability for further military service.

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[REDACTED]

Notwithstanding the recommended corrective action below, the Board determined his assigned characterization 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 his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board weighed Petitioner's relatively brief period of active duty against his record of misconduct. Further, the Board concurred with the AO that insufficient evidence to attribute the circumstances of his separation to PTSD. As a result, the Board concluded significant negative aspects of Petitioner's service outweighed the positive aspects and continues to warrant a GEN characterization. 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.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new DD Form 214, for the period ending 11 November 1974, reflecting that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the separation authority was "MILPERSMAN 1910-164," and the reentry code was "RE-4."

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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

3/14/2024

