



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

██████████
Docket No. 5039-23
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 w/ enclosures
(2) Advisory Opinion (AO) of 27 Nov 23
(3) Rebuttal to AO

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 to "Honorable" and his narrative reason for separation be changed to "Secretarial Authority." Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 26 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 enclosure (3), an advisory opinion (AO) furnished by qualified mental health provider, and enclosure (4), Petitioner 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Navy and began a period of active duty on 29 July 2004. He served without incident until 21 December 2006, when his urinalysis results from a unit inspection were reported as positive for THC.

c. Petitioner was subject to nonjudicial punishment on 11 January 2007 for a single violation of Article 112a of the Uniform Code of Military Justice due to wrongful use and possession of the controlled substance marijuana and was subsequently issued notice of administrative board procedure by reason of misconduct due to drug abuse.

d. Petitioner waived his right to a hearing before an administrative board and elected not to submit a statement. The recommendation for his separation under Other Than Honorable conditions was forwarded that same day, and he was discharged on 8 February 2007.

e. Petitioner previously applied to the Naval Discharge Review Board (NDRB), which considered his request on 21 November 2019. His request was denied by the NDRB after it concluded his discharge was proper as issued.

f. Petitioner contends that his drug use was a one-time indiscretion due to self-medication of his depression and post-traumatic stress disorder (PTSD) following operational participation in disaster relief following a tsunami in the Indian Ocean and after experiencing spousal infidelity. He is remorseful for his misconduct but believes that his discharge characterization no longer serves a meaningful purpose, over 16 years later, in light of his otherwise Honorable service for two years and six months and his post-discharge character and accomplishments. The latter include mentoring at risk youth, volunteering with the American Red Cross, providing primary care for his father following a cancer diagnosis, and completing certification as a medical supplies and equipment delivery driver after spending several months hospitalized with extensive rehabilitation after his leg was shattered when he was caught in crossfire at a gas station.

g. Because Petitioner contends that a mental health condition affected his discharge, the Board requested the AO at enclosure (2) for consideration. The AO noted that:

Petitioner was referred for psychological evaluation and properly evaluated during his enlistment. The absence of mental health diagnosis was 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. He has provided no medical evidence to support his claims.

The AO concluded, "there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

h. Petitioner submitted a rebuttal to the AO describing his post-discharge struggles with PTSD which he attributes to his military service and for which he sought therapy and participated in support groups within his church community. The AO remained unchanged after a review of Petitioner's rebuttal evidence.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board noted Petitioner's misconduct and does not condone it. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition attributable to military service. However, the Board observed that Petitioner's misconduct consisted of a single offense of using marijuana over 16 years ago and he has since committed his life toward positive contributions within his community, to include youth mentorship and volunteerism. The Board found the favorable factors Petitioner submitted for consideration of clemency outweighed the single incident of misconduct evidenced by his NJP. Accordingly, the Board determined that it is in the interest of justice to grant the partial relief by upgrading his characterization of service to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain 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 a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Further, the Board determined Petitioner's basis for separation remains appropriate. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action below.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 8 February 2007, he was discharged with a "General (Under Honorable Conditions)" characterization of service.

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

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.

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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.

2/26/2024

[REDACTED]