



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

█
Docket No. 5148-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
█

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 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 28 Feb 24

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 for an upgrade of his characterization of service.

2. The Board, consisting of █ and █, reviewed Petitioner's allegations of error and injustice on 13 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, applicable statutes, regulations, and policies, to include references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional and Petitioner's 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 regulation 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. Petitioner enlisted in the Navy and began a period of active duty on 25 July 1988.

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[REDACTED]

d. On 15 June 1989, Petitioner issued an administrative remarks (Page 13) counseling warning concerning deficiencies in his performance and conduct. Specifically, Violation of the Uniform Code of Military Justice (VUCMJ), Article 86, Unauthorized absence (UA) and Absence from appointed place of duty. Petitioner was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation.

e. On 29 June 1989, Petitioner received non-judicial punishment (NJP) for UA, a period totaling seven days and absence from his appointed place of duty.

f. On 11 October 1989, Petitioner issued a Page 13 counseling warning concerning deficiencies in his performance and conduct. Specifically, VUCMJ, Article 134, Incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor.

g. On 22 October 1989, Petitioner received a medical evaluation due to alcohol abuse and was deemed not fit for duty.

h. On 7 November 1989, Petitioner received a second NJP for incapacitation for performance of duties through prior wrongful indulgence in intoxicating liquor.

i. On 21 December 1989, Petitioner received a third NJP for larceny.

j. On 28 June 1990, Petitioner received a fourth NJP for failure to obey a lawful general order.

k. On 12 July 1990, Petitioner received a fifth NJP for absence from his appointed place of duty.

l. On 16 July 1990, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct and commission of a serious offense. Petitioner was advised of and elected his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

m. On 17 August 1990, an ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct and recommended that Petitioner be separated from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy by reason of misconduct due to pattern of misconduct. On 21 September 1990, Petitioner was so discharged.

n. On 31 August 1990, Petitioner received a medical evaluation and diagnosed as not dependent of alcohol and fit for full duty/accountable for his own actions.

o. Petitioner contends the following injustices warranting relief:

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[REDACTED]

(1) He experienced the explosion onboard the [REDACTED] that killed Sailors, this tragedy affected his mental health at the time.

(2) He developed PTSD, which has had a significant impact on his life and affected the decisions that he made while serving in the Navy.

(3) His command never offered him any help for his mental health and physical well-being during his service but chose to have him discharged with an OTH discharge.

(4) His discharge status does not accurately reflect the circumstances of his service.

(5) His record clearly details the bad decisions that he made due to PTSD after being involved in the tragic events.

p. For purposes of clemency and equity consideration, the Board noted Petitioner provided documentation from the Department of Veterans Affairs and advocacy letters.

q. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his service, the VA has granted service connection for treatment PTSD symptoms attributed to military service. His misconduct occurred after the purported traumatic event, and some of his behavior could be attributed to symptoms of unrecognized PTSD. It is possible that his problematic alcohol use could be considered an indicator of self-medication of unrecognized symptoms of PTSD. However, it is difficult to attribute larceny and disobedience to symptoms of PTSD, particularly given that larceny is not a typical symptom of PTSD and the Petitioner made statements that he did not steal. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD."

r. In response to the AO, Petitioner provided additional supporting documentation that supplied additional clarification of the circumstances of his case. After review of Petitioner's rebuttal evidence, the AO remained unchanged.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

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The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to pattern of misconduct. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service.

In applying liberal consideration to Petitioner's PTSD and any effect that it may have had upon his misconduct; the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's PTSD may have had upon his misconduct. Based upon this review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his PTSD outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to Honorable.

Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to Secretarial Authority in the interests of justice.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 21 September 1990, Petitioner's characterization of service was "Honorable," narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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 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.

3/29/2024

[REDACTED]