



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

█
Docket No. 5624-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo) (Hagel Memo)
(c) PDUSD Memo 24 Feb 16 (█ 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
(3) Subject's naval record (excerpts)
(4) Advisory Opinion of 30 Nov 23

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) requesting an upgrade to his character of service, and change his narrative reason for separation, separation authority, and separation code to reflect a "Secretarial Authority" discharge. Enclosures (1) and (2) apply.

2. The Board, consisting of █, 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider 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 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. Petitioner enlisted in the Navy and began a period of active service on 27 July 1998. After a period of Honorable (HON) service, he immediately reenlisted on 19 June 2004.

d. On 5 April 2005, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) and being drunk on duty. Subsequently, on 25 April 2005, Petitioner's Commanding Officer (CO) recommended he be administratively separated with a General (Under Honorable Conditions) (GEN) discharge.¹ Unfortunately, the documents pertaining to Petitioner's administrative separation are not contained in his 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. Based on the information contained in Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), he was separated on 27 April 2005 with an "Under Other Than Honorable Conditions (OTH)" characterization of service. His narrative reason for separation was "Misconduct: Commission of a Serious Offense," his reentry code was "RE-4," and his separation code was "JKQ," which corresponds to misconduct – commission of a serious offense. Petitioner's period of continuous Honorable service from 27 July 1998 through 18 June 2004 is not documented in his DD Form 214.

e. Petitioner contends an unrecognized, undiagnosed, and untreated psychiatric condition was a mitigating circumstance that outweighed his one-time misconduct and renders an OTH discharge inequitable, and his diagnosis of adjustment disorder meets the "liberal consideration" and "special consideration" standard set forth in the Hagel and Kurta memoranda, and in 10 U.S.C. Section 1553.

f. As part of the Board's review, the Board considered enclosure (4) and the Petitioner's response. The AO states in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is behavioral evidence of an alcohol use disorder that onset prior to his entry into service. Post-service, the VA has granted service connection for a mental health condition that is attributed to military service. While it is possible that difficulties adjusting following his return from deployment may have exacerbated his alcohol use, there is insufficient information to attribute his misconduct solely to adjustment, given pre-service problematic alcohol behavior that continued in service and his denial of problematic alcohol use and offered treatment in service. 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 mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition other than alcohol use disorder."

¹ This information obtained from service record book documentation submitted by Petitioner as part of his application package. No administrative separation document appears in Petitioner's OMPF.

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

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. First, as noted previously, Petitioner's DD Form 214 does not indicate his continuous Honorable period of service from 27 July 1998 to 18 June 2004, and requires correction.

The Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with references (b) through (e). After reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be changed to "General (Under Honorable Conditions)." In making this determination, the Board considered the AO finding of post-service evidence of a mental health condition that may be attributed to military service, Petitioner's favorable military service prior to his misconduct—including his Honorable completion of his first enlistment, his time at sea, his participation in the [REDACTED], and his receipt of two Navy and Marine Corps Achievement medals—and the fact his one occurrence of misconduct was alcohol-related, an illness he is currently trying to address. The Board also gave considerable weight to the CO's recommendation that Petitioner receive a GEN discharge.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an HON discharge. The Board determined that an HON 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 GEN discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's narrative reason for separation, separation code, and reentry code remain appropriate based on his misconduct.

Further, the Board determined Petitioner's basis for separation remains appropriate in light of his misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION

That Petitioner be issued a new DD Form 214, for the period ending 27 April 2005, indicating he was discharged with a character of service of "General (Under Honorable Conditions)." Additionally, Block 18 be amended to indicate continuous Honorable service for the period of 27 July 1998 through 18 June 2004.

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

2/13/2024

[REDACTED]