



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

██████████
Docket No. 6348-24
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 with attachments
(2) Case summary

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 his discharge be upgraded to an "Honorable" characterization of service.

2. The Board consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 1 April 2024, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered the 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 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 12 December 1989. On 17 September 1990, Petitioner received nonjudicial punishment (NJP) for being drunk on duty. On 28 September 1990, Petitioner was evaluated by a medical officer for drugs and alcohol dependency. Consequently, he was diagnosed with alcohol abuse and recommended to attendant Level I Command, NADSAP. On 6 December 1990, Petitioner was counseled

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concerning his previous NJP violation and advised that failure to take corrective action could result in administrative separation. On 20 December 1991, Petitioner was evaluated by a medical officer for drugs and alcohol dependency and diagnosed with alcohol abuse. Subsequently, Petitioner was recommended to attend Level II CAAC Program. On 23 July 1993, Petitioner received a second NJP for insubordinate conduct towards a senior petty officer. On 27 July 1993, Petitioner was evaluated by a medical officer for drugs and alcohol dependency and diagnosed with alcohol abuse. Consequently, Petitioner was recommended to attend Level II CAAC Program and was considered a Level II alcohol failure. On 28 July 1993, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and alcohol rehabilitation failure. On the same date, Petitioner decided to waive his procedural rights. On 30 July 1993, the Petitioner's commanding officer recommended that he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service by reason misconduct due to commission of a serious offense and alcohol rehabilitation failure. On 18 August 1993, the separation authority approved and ordered that Petitioner be administrative separated from the Navy with an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 23 August 1993, Petitioner was so discharged.

c. Petitioner contends he never received Level II treatment or any type of rehabilitation treatment for alcoholism for his first offense in Sep 1990. Petitioner claims his treatment was put on hold indefinite as a result of his deployment in support of ██████████. Petitioner also contends he was assigned to the ██████████ tasked with liberating ██████████ Airport. Petitioner states because of his rate, he was tasked with clearing combat debris from the roadway and sometimes he encountered human casualties. Petitioner was attached to ██████████ from 1990 to 1991 and received the Battle "E" Battalion award for been one of the first American forces in ██████████ for infrastructure and one of the last ones for cleanup. Petitioner further contends his second offense was for insubordinate conduct towards a superior petty officer. Petitioner claims one of the factors for his discharge stated by his CO was that he failed prior alcohol rehabilitation, Level II DAPA. Petitioner states, if they had conducted a thorough review of his records, they would have noticed that he never had any treatment or counseling for alcohol. Petitioner contends one of the factors he believes was the main reason for his actions was his undiagnosed PTSD from the ██████████, which was not an identified condition at that time. Petitioner feels he was not provided the opportunity to fully recover from his alcohol abuse, compounded with his PTSD. Post discharge, Petitioner states his son was honorably discharged from the Army. Petitioner also claims to be a good Christian/ Catholic who supports his family while trying to raise his three adopted children. Petitioner states he stopped drinking alcohol and has been sober for over 25 years.

d. For purposes of clemency and equity consideration, Petitioner provided documentation in the form of copies of his individual statement, chronological record of medical care, and a character letter of support.

e. In connection with Petitioner's assertions that he incurred PTSD and other mental health concerns (MHCs) during military service, which might have contributed to his separation, the Board requested, and reviewed, an Advisory Opinion (AO) provided by a mental health

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professional who reviewed the Petitioner's request for correction to his record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim, and at least one infraction was conducted prior to his deployment. 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) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge characterization. Additionally, the Board concurred with the AO that there is insufficient evidence that Petitioner's misconduct could be attributed to a mental health condition. However, in light of references (b) through (e), after reviewing the record liberally and holistically, given the totality of the circumstances, and as a matter of injustice, the Board concluded Petitioner's discharge characterization should be upgraded to "General (Under Honorable Conditions)" and his basis for separation be changed to reflect a "Secretarial Authority" discharge.

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 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 directs the following corrective action:

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That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 23 August 1993, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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.

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.

4/18/2024

