



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

█  
Docket No. 7033-23  
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) PDUUSD 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 that his naval record be corrected to upgrade his characterization of service and change his narrative reason for separation.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 8 April 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was provided an opportunity to respond to 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 enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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c. The Petitioner enlisted in the United States Navy and began a period of active service on 8 November 2000. On his enlistment application, Petitioner acknowledged pre-service experimental marijuana use and citations for underage drinking, disorderly conduct, and trespassing.

d. Petitioner was assigned to [REDACTED] during his time in service. It is unclear in the record the exact deployment dates or operations; however, he was awarded the Global War on Terrorism Expeditionary Medal and a Navy Unit Commendation Medal discussing successful execution of a hazardous special operation. Petitioner's post-service medical records note "resolving symptoms of PTSD following deployment to Iraq."

e. On 16 May 2006, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 128, for assault consummated by a battery, Article 107, for false official statement, and Article 92, for failure to obey order or regulation (fraternization). His security clearance was suspended and he was reassigned administrative duties pending separation.

f. On 25 May 2006, Petitioner underwent a separation physical wherein he notes a diagnosis of Depression and General Anxiety Disorder (GAD).

g. On 7 June 2006, Petitioner was discharged from the Navy with a General (Under Honorable Conditions) (GEN) discharge for commission of a serious offense and assigned an RE-4 reentry code.

h. On 14 February 2008, the Naval Discharge Review Board (NDRB) denied Petitioner's application for relief. Petitioner requested a discharge upgrade in order to secure Department of Veterans Affairs (VA) benefits and employment opportunities. The NDRB determined that Petitioner's discharge was proper as issued and that no change was warranted.

i. Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service. Specifically, Petitioner asserts that he incurred Post Traumatic Stress Disorder (PTSD) after being the victim of domestic violence. He explains that he was in a volatile relationship with another member in his command, which culminated in the misconduct that formed the basis of his separation. In support of his request, Petitioner provided a VA diagnosis of PTSD and episode Alcohol Abuse. He also provided an evaluation by a civilian neuropsychologist who diagnosed Petitioner with Unspecified Depressive Disorder.

j. As part of the Board's review process, a qualified mental health professional reviewed Petitioner's contentions and the available records and issued an AO dated 20 February 2024. The AO noted 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. However, shortly following his separation from service, he was diagnosed with PTSD and the VA

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has granted service connection for another mental health condition. He has been evaluated for TBI, but if has been deemed noncontributory. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct, as it is difficult to attribute clandestine fraternization to a mental health condition. 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 diagnoses of PTSD, TBI, and another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. While the Board noted Petitioner's misconduct and does not condone his actions, it concluded that his post service mental health diagnoses sufficiently mitigated his misconduct to merit a measure of relief. Specifically, under the guidance provided in references (b) through (e), the Board determined the mitigation evidence offset the severity of the misconduct. In making this finding, the Board felt that there is in-service evidence of behavior that may be associated with an undiagnosed mental health condition, which may have contributed to the circumstances surrounding his separation. Therefore, the Board concluded that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to reflect "Secretarial Authority," as the misconduct committed by the Petitioner was mitigated by his service connected mental health conditions.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge characterization. The Board gave liberal and special consideration to Petitioner's record of service, and his contentions about how his mental health issues had an adverse impact on his service. However, the Board concurred with the AO that there is insufficient evidence that Petitioner's mental health symptoms absolved him of responsibility or negatively impacted his understanding concerning his behavior and the possible ramification of his misconduct. The Board felt that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held at least partially accountable for his actions on active duty. Even if the Board assumes that Petitioner's misconduct was attributable to a mental health conditions, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a General (Under Honorable Conditions) discharge remains the appropriate characterization in this case.

Finally, the Board did not find an error or injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of the

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circumstances, and that such reentry code was proper and in compliance with all Department of the Navy and Marine Core directives and policy at the time of his discharge. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, indicating that, on 7 June 2006, the separation authority was "MILPERSMAN 1910-164," the separation code was "JFF," and the narrative reason for separation was "Secretarial Authority."

That no further changes be made to the 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 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.

4/22/2024

