



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

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Docket No. 7319-23
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) 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) USD Memo of 25 Aug 17 (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 31 Jan 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 to Honorable.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■ and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 25 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. 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 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 23 October 2001.

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d. On 10 April 2002, Petitioner received non-judicial punishment (NJP) for provoking speeches. Petitioner was issued an administrative remarks (Page 13) counseling warning concerning deficiencies in his poor military performance and conduct as evidenced by his NJP offense. The Page 13 expressly warned Petitioner that any further deficiencies in his performance and/or conduct may result in disciplinary action and administrative separation processing.

e. On 27 June 2005, Petitioner received a second NJP for disorderly conduct; drunkenness. Petitioner issued a second Page 13 counseling warning concerning deficiencies in his poor military performance and conduct as evidenced by his NJP offense. The Page 13 expressly warned Petitioner again that any further deficiencies in his performance and/or conduct may result in disciplinary action and administrative separation processing.

f. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file. 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 on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), Petitioner was separated from the Navy on 5 August 2005, with a "General (Under Honorable Conditions) (GEN)" characterization of service, his narrative reason for separation is "Personality Disorder," his reentry code is "RE-4," and separation code is "GFX," which corresponds to convenience of the government – personality disorder.

g. Petitioner contends the following injustices warranting relief:

(1) He was diagnosed with a mental health disorder while serving in the Navy;

(2) He believes that an upgrade of his character of service is just considering he was suffering from a major depressive disorder which was confirmed by his recent Department of Veterans Affairs (VA) claim that he had mental health issues caused by his time in the service; and

(3) Before his condition started, he was the distinguished military graduate in multiple schools in the Navy.

h. For purposes of clemency and equity consideration, the Board considered the evidence the Petitioner submitted in support of his application.

i. 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:

During military service, Petitioner was evaluated and diagnosed with a personality disorder. Post-service, the VA has granted service connection for another mental health condition. It is possible that symptoms identified as characterological in service have been reconceptualized as depression with the passage of time and increased understanding. Unfortunately, available records are not sufficiently

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detailed to provide a nexus with his misconduct, given the lapse in time between NJPs. 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."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice. Although not specifically requested, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or personality disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214. However, the Board concluded Petitioner's reentry code should remain unchanged based on Petitioner's unsuitability for further military service due to his existing mental health condition.

With regard to Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service and the previously mentioned contentions raised by Petitioner in his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant the requested relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs and multiple administrative counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board concluded, Petitioner's record reflected misconduct and behavior which clearly rendered Petitioner a burden to his command and likely adversely impacted the Sailors with whom he served. Further, the Board concurred with the AO that while 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. As the AO explained, the available records are not sufficiently detailed to provide a nexus with Petitioner's misconduct, given the lapse in time between his NJPs. Therefore, even in light of references (b) through (e) and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting the requested relief as a matter of clemency or equity. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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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 DD Form 214 reflecting that, for the period ending 5 August 2005, Petitioner's 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.

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.

4/3/2024

