



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

██████████  
Docket No. 7499-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,  
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)  
(c) USD Memo of 25 August 2017 (Kurta Memo)  
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 29 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered an 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. The Petitioner originally enlisted in the U.S. Navy and began a period of active service on 19 October 1999. Petitioner's pre-enlistment physical examination, on 27 July 1999, and

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,  
XXX-XX-██████

self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 27 June 2003, Petitioner reenlisted for a period of three (3) years.

d. Subsequently, Petitioner tested positive for marijuana on a unit sweep urinalysis test. Consequently, Petitioner was notified of administrative separation proceedings by reason of misconduct due to drug abuse. The Petitioner waived his right to request an administrative separation board.

e. In the interim, Petitioner's separation physical examination, on 21 December 2004, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Specifically, Petitioner expressly denied on his medical history of ever having: (1) nervous trouble of any sort, (2) loss of memory or amnesia, or neurological symptoms, (3) frequent trouble sleeping, (4) receiving counseling of any type, (5) depression or excessive worry, and/or (6) been evaluated for a mental condition.

f. On 19 January 2005, the Separation Authority approved and directed Petitioner's separation. Ultimately, on 28 January 2005, the Petitioner was discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

g. On 4 February 2010, the Naval Discharge Review Board (NDRB) denied Petitioner's initial application to upgrade his discharge. Petitioner did not proffer any mental health contentions at such time in his NDRB application.

h. As part of the review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records and issued an AO dated 5 February 2024. The Ph.D. stated 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. He denied experiencing mental health symptoms before enlistment and upon separation. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns that appear unrelated to his military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, which he stated was one-time use in the context of personal stressors. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,  
XXX-XX-[REDACTED]

i. Following a review of Petitioner's AO rebuttal submission, the Ph.D. determined that there was post-service evidence from a civilian provider of a possible service-connected PTSD diagnosis. The Ph.D. still concluded, however, that there was insufficient evidence to attribute Petitioner's misconduct to PTSD or another mental health condition. In examining the totality of the evidence, the Ph.D. placed more weight on Petitioner's in-service responses over the post-service opinion of Petitioner's civilian provider.

j. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner argued that his OTH was the result of his mental health and familial issues. Petitioner contended that he was suffering from PTSD, anxiety, and depression at the time of his misconduct, and that his misconduct was minor in nature. Petitioner proffered that, but for the drug-related misconduct, his service was exemplary and his post-service conduct reflected eighteen (18) years as a good and productive citizen.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief.

The Board initially determined that Petitioner's administrative separation was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

The Board did not grant relief based on any mental health considerations. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and Petitioner's misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of his misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that Petitioner's misconduct was intentional and willful and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

Notwithstanding, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's drug-related misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,  
XXX-XX ██████████

under OTH conditions, and that a discharge upgrade to “General (Under Honorable Conditions)” (GEN) strictly on clemency and leniency grounds is appropriate at this time.

In granting his discharge upgrade, the Board cited the fact that the relative severity of Petitioner’s specific misconduct offense has changed over time. The Board also cited that this was a single offense and Petitioner had no other counseling entries or documented misconduct in his entire service record.

However, the Board was not willing to grant an Honorable discharge characterization. The Board determined that an Honorable discharge was appropriate only if the Sailor’s service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that significant negative aspects of the Petitioner’s conduct and/or performance outweighed the positive aspects of his military record, and that a GEN discharge characterization was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

Further, the Board did not find a material error or injustice with the Petitioner’s original reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined 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.

That Petitioner’s character of service, for the period ending 28 January 2005, be changed to “General (Under Honorable Conditions),” the narrative reason for separation should be changed to “Secretarial Authority,” the separation authority be changed to “MILPERSMAN 1910-164,” and the separation code be changed to “JFF.”

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,  
XXX-XX-[REDACTED]

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.

4/2/2024

