



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

██████████
Docket No. 7774-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

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 w/ enclosures
(2) Advisory Opinion (AO) of 19 Mar 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 that his discharge be upgraded to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered enclosure (2), the advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner's mental health contentions.

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 16 December 1991.

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[REDACTED]

c. Petitioner was absent without authority from 14 September 1993 through 27 September 1993, during which time he missed a required movement with his unit. Upon his return, he was issued administrative counseling regarding unauthorized personal use of a government calling card and was directed to repay any debt incurred as a result. He then received nonjudicial punishment (NJP), on 13 October 1993, for his previous violations of the Uniform Code of Military Justice under Articles 86 and 87 for unauthorized absence (UA) and for missing movement by design, respectively.

d. Petitioner was subject to a second NJP, on 16 December 1983, for two violations under Article 92 for willful dereliction of duty. Following this NJP, his commanding officer decided to process him for administrative separation by reason of misconduct due to commission of a serious offense. Petitioner was formally notified the following day and elected to waive his rights to counsel, to a hearing, and to submit a statement for consideration.

e. A recommendation for Petitioner's discharge under Other Than Honorable conditions was approved and he was discharged, on 22 December 1993, with a 3.4 final overall trait average.

f. Petitioner previously applied to the Naval Discharge Review Board (NDRB) contending that his discharge was the result of a verbal agreement between himself and his executive officer (XO), who he did not get along with, and that his XO provided false information to the commanding officer regarding the agreement. The NDRB denied his request on 15 July 1996 after determining his discharge was proper as issued.

g. Petitioner contends that his friend and roommate aboard the ship shot himself in a suicide attempt which left his friend in a vegetative state and caused him to experience significant trauma symptoms, to include difficulty focusing or remembering things during his last few months of service. He attributes the mistakes he made on his job to these initial symptoms of post-traumatic stress disorder (PTSD). He also states that he was later questioned by Naval Criminal Investigators following the incident, from which he learned that his girlfriend of the past two years had been having an affair with his friend during periods when he was on duty. He describes feeling like he was in a fog for several months after the incident and states that he has since begun receiving treatment from the Department of Veterans Affairs (VA). He has submitted his VA treatment records relevant to his PTSD diagnosis and mental health care in support of his contentions that his misconduct was mitigated by his traumatic experience.

h. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested the AO at enclosure (2) for consideration, which provided the following review of Petitioner's supporting documents.

The Petitioner submitted six months of VA outpatient records whereby he was diagnosed with and treated for PTSD. The notes also mention that prior to the VA, he participated in evidence-based trauma therapy for PTSD at [REDACTED]. The notes are consistent with the veteran's anecdote that his best friend shot himself as a suicide attempt in 1993. The friend was unsuccessful but was reportedly left in a vegetative state, and did succeed in suicide years later. The veteran reported feeling a sense of responsibility as he himself found his friend after the attempt,

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and he had just learned that his friend had evidently had an affair with his [petitioner's] wife. ... It is plausible that the Petitioner was experiencing PTSD symptoms leading to avoidance (UA, missing ship's movement), and that he would have had worsened concentration and motivation which might have resulted in dereliction of duty.

Based upon this review, the licensed clinical psychologist provided a clinical opinion advising that "there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is sufficient 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 concluded that Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board noted Petitioner's misconduct and does not condone it; however, the Board concurred with the AO that it is plausible Petitioner was experiencing symptoms of PTSD, which reasonably contributed to his UA, missed movement, and dereliction of duty. The Board found it credible that Petitioner could have experienced a significant amount of trauma, and resultant symptoms, from discovering his close friend onboard the ship after an attempted suicide by gunshot. Upon consideration of the available evidence and applying liberal consideration consistent with the observations in the clinical opinion of the Board's licensed clinical psychologist, the Board found that the favorable factors Petitioner submitted for consideration substantially outweighed the misconduct evidenced by his two NJPs and counseling entry. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief. In addition, based on the same rationale, the Board determined it was in the interests of justice to change Petitioner's reason for separation to Secretarial Authority.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 22 December 1993, his "Honorable" discharge was issued under the authority of "MILPERSMAN 3630900" for the narrative reason of "Secretarial Authority" with a separation code of "JFF" and reentry code of "RE-1J".

That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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[REDACTED]

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.

4/18/2024

