



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

██████████
Docket No. 8013-24

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████, ██████████,
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) USECDEF Memo of 25 Aug 2017 (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 1 Apr 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 and annotation of his first Honorable period of service to his discharge documents.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 26 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional, that was considered favorable toward Petitioner.

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.

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c. Petitioner enlisted in the Navy and began a period of active duty on 29 June 2000. After completion of his first continuous period of Honorable service, Petitioner immediately reenlisted on 24 June 2004.

d. On 29 July 2004, Petitioner received non-judicial punishment (NJP) for wrongful use of amphetamines. Consequently, he was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and waived his procedural rights.

e. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy by reason of misconduct due to drug abuse. On 8 October 2004, Petitioner was so discharged.

f. Upon his discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) which erroneously fails to annotate his continuous Honorable period of service from 29 June 2000 to 23 June 2004.

g. Petitioner contends the following injustices warranting relief:

(1) He did not have a medical evaluation at the time of his discharge;

(2) He suffered PTSD and was not treated after being rescued from falling off the USS [REDACTED] and [REDACTED]

(3) He believes he was a good Sailor.

h. For purposes of clemency and equity consideration, the Board noted Petitioner provided several documents that support his contention of falling off the [REDACTED], evidence of his positive conduct while in service, and documentation showing positive post-service conduct.

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:

Although there is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, it is possible that he suffered from PTSD after falling from his ship's flight deck at night in the open ocean. Although methamphetamine seems an odd substance to use in order to cope or calm self from PTSD symptoms, it is possible that he was using methamphetamine, in addition to alcohol to quell or avoid his symptoms.

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

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CONCLUSION

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

As noted previously, Petitioner's DD Form 214 does not document his continuous Honorable period of service 29 June 2000 to 23 June 2004, and requires correction.

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is sufficient evidence of a mental health condition that may be attributed to military service, and there is sufficient evidence that his misconduct could be attributed to a mental health condition.

In applying liberal consideration to Petitioner's mental health condition and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. After thorough review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his mental health condition outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN). Further, the Board determined Petitioner's narrative reason for separation, separation authority, separation code should 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 service 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 outweighed the positive aspects of his military record even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate. In addition, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended of this corrective action.

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:

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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 on 8 October 2004, Petitioner's character of service upgraded to "General (Under Honorable Conditions)," narrative reason for discharge to "Secretarial Authority," separation authority to "MILPERSMAN 1910-164," and SPD code to "JFF."

Addition of his continuous Honorable period of service from 29 June 2000 to 23 June 2004.

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.

5/20/2024

