



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

■
Docket No. 8338-23
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) 10 U.S.C. §1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)
(c) USECDEF Memo of 25 Aug 17 (Kurta Memo)
(d) SECDEF Memo of 13 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion of 5 March 2024

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) requesting his characterization of service be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosures (1) through (3) apply.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 22 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board considered enclosure (4), the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, 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.

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

c. Petitioner enlisted in the Navy and began a period of active service on 25 May 1990.

d. On 29 May 1990, Petitioner was issued an administrative remarks (Page 13) counseling concerning deficiencies in his performance and/or conduct. Specifically, fraudulent enlistment for failure to disclose pre-service civil police involvement. Petitioner was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 3 February 1993, Petitioner received non-judicial punishment (NJP) for misbehavior of a sentinel. He was issued another Page 13 counseling and again warned that further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 3 June 1993, Petitioner received NJP for dereliction of duty.

e. On 12 January 1995, Petitioner reenlisted in the Navy and began a second period of active duty. On 1 May 1997, Petitioner received Page 13 counseling for dereliction of duty and damaging government property and was again warned that further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 3 June 1993, Petitioner received NJP for dereliction of duty. On 3 November 1997, Petitioner received NJP for wrongful use of marijuana.

f. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). 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 DD Form 214, he was separated on 19 December 1997 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, the narrative reason for separation is "Misconduct," his reentry code is "RE-4," and his separation code is "HKK," which corresponds to misconduct - drug abuse, involuntary discharge in lieu of further processing or convening of a board (board waiver). Petitioner's DD Form 214 did not annotate his period of continuous Honorable service from 25 May 1990 to 11 January 1995.

g. Petitioner contends that he suffers from Post-Traumatic Stress Disorder (PTSD) and other stress-related issues that may have mitigated his misconduct.

h. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

i. As part of the Board's review, the Board considered enclosure (4). The AO states 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.

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

He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct..

The AO 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.”

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner’s request warrants partial relief. Specifically, as previously discussed, the Board noted Petitioner’s DD Form 214 does not reflect his period of continuous Honorable service from 25 May 1990 to 11 January 1995.

Notwithstanding the recommended corrective action below, the Board found no error in Petitioner’s OTH characterization of service discharge for separation for misconduct due to drug abuse. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner’s desire for a discharge upgrade and the previously mentioned contentions raised in his application.

After thorough review, the Board concluded Petitioner’s potentially mitigating factors were insufficient to warrant granting the relief requested. In making this finding, the Board considered the seriousness of Petitioner’s misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also considered the likely negative impact Petitioner’s repeated misconduct had on the good order and discipline of his command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute his misconduct to PTSD or another mental health condition. Finally, the Board noted Petitioner provided no evidence to substantiate his contentions.

As a result, the Board concluded Petitioner’s conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the characterization of service upgrade he requested or granting relief as a matter of clemency or equity.

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

RECOMMENDATION

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 19 December 1997, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 25MAY1990 TO 11JAN1995."

That no further changes be made to Petitioner's 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 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.

5/12/2024

