



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

██████████
Docket No. 8477-23

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), 9 Apr 24
(3) Rebuttal to AO, 9 May 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" and that his narrative reason for separation be upgraded to "Secretarial Authority." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 24 May 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 also considered enclosure (2), an advisory opinion (AO) furnished by qualified mental health provider, and enclosure (3), 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

b. Petitioner enlisted in the Navy and began a period of active duty on 20 October 1987. He served without incident until, on 27 December 1988, he was physically assaulted by a group of men who, in the course of the assault, beat him with a pipe, causing injury to his hands, face, legs, and back.

c. On 23 February 1989, Petitioner was subject to nonjudicial punishment (NJP) for violations of Articles 86 and 92 of the Uniform Code of Military Justice (UCMJ) due to failure to go to his appointed place of duty and failure to obey a lawful order, respectively. As a result, he was reduced in grade to E-1 and placed on 30 days of restriction and extra duty in addition to being administratively counseled regarding a derogatory performance evaluation.

d. As a result of his injuries, Petitioner was unable to perform his normal duties. On 17 February 1989, a Medical Board Report recommended that he be placed into a limited duty (LIMDU) status pending reevaluation after a period of anticipated physical recovery.

e. Petitioner's record of performance documents that he was subject of an NJP on 20 April 1989, although no other documentation of his offenses or punishment was retained in his official military personnel file (OMPF).

f. On 3 May 1989, Petitioner absented himself without authority and remained in an unauthorized absence (UA) status until his voluntary return to military authority on 18 May 1989. He was subsequently subject to NJP on 29 June 1989 for this Article 86 offense and for two additional UCMJ offenses, to include Article 92 for failure to obey a lawful order by having an alcoholic beverage in his possession while in a restricted status and Article 80 for the attempted theft of a tire by removing the lug nuts.

g. Petitioner committed two additional periods of UA from 30 June 1989 through 24 June 1989 and from 4 August 1989 through 8 September 1989. Although he voluntarily surrendered from the first UA period, his second period of UA was terminated by apprehension. Petitioner was tried by Special Court-Martial (SPCM) for these offenses, as well as for offenses under Articles 91, 112a, and 134. The majority of the records documenting his SPCM conviction and punishment are illegible; however, his punishment included a punitive discharge.

h. On 11 December 1989, while serving his sentence of confinement, Petitioner received a drug abuse evaluation incident to his conviction for a drug-related offense under Article 112a of the UCMJ. This evaluation indicated that Petitioner had urinalysis in June of 1989 which had reported positive use of cocaine and that he had admitted to using cocaine several times.

i. Petitioner's Bad Conduct Discharge (BCD) was ordered executed, and he was discharged on 20 August 1990.

j. Petitioner contends, through legal counsel, that he had no record of misconduct prior to the injuries he incurred as a result of being violently assaulted. His injuries resulted in limited use of his hand, rendering him unable to perform much of the work associated with his rating, resulting in his placement on LIMDU, and stalling his career progression. He states that he needed more time to heal from his injury and needed more support from his chain of command, but he

apologizes for his failure to maintain standards and for absenting himself from his unit. Post-discharge, Petitioner submits evidence of diagnoses of post-traumatic stress disorder (PTSD), major depressive disorder (MDD), generalized anxiety disorder (GAD), and alcohol use which have all been attributed to his in-service trauma. He believes that his mental health condition and traumatic experience warrant the application of liberal consideration to his in-service misconduct. He also submits evidence of his post-service character and accomplishments to include his professional certifications and six character letters attesting to his self-improvement, dependability, mentorship of others, and volunteerism; specifically, Petitioner maintained civilian employment as a certified wastewater operator and tester in the over-30 years since his punitive discharge, and he feels that this “most” unfavorable characterization unduly stigmatizes him relative to his current good character.

k. Because Petitioner contends that a mental health condition affected the circumstances of his misconduct and resulting punitive discharge, the Board requested the AO at enclosure (2) for consideration, which noted that Petitioner submitted a recent medical letter from a nurse who treats him for PTSD. The reviewing mental health professional observed the following during her review of Petitioner’s in-service and post-service medical records:

The Petitioner submitted a letter dated August 2023 from a nurse practitioner indicating that she had been treating the Petitioner for PTSD. He submitted six character references and post-service accomplishments. Although there is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, it is possible that he was suffering from undiagnosed symptoms of PTSD from having been assaulted. His medical service record does note an assault by five men who used a pipe, which subsequently resulted in damage to the Petitioner’s hand as he was trying to fight them off. His service record does not indicate whether he was counseled following any of his unauthorized absences. If he were, then repetitively going on UA would not necessarily be a result of PTSD symptoms. If however, he continued to go on UA without warning, counseling or consequence, it is possible that he was experiencing avoidance due to PTSD symptoms.

As a result, the clinical opinion of the AO concluded that “there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient evidence that at least some of his misconduct could be attributed to a mental health condition.”

l. The rebuttal brief which Petitioner’s legal counsel submitted no new evidence; instead, it provided further argument regarding the application of the liberal consideration policies in reference (b) through (e). Additionally, this rebuttal incorrectly stated that “the author of the [AO] found that there was insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that at least some of his misconduct could be attributed to a mental health condition,” which the Board disregarded in light of the contradictory, favorable opinion documented in the AO. The AO remained unchanged after consideration of the rebuttal evidence.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

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 regarding the probable nexus between his UA periods and the trauma he experienced as a result of being violently assaulted. Specifically, the Board noted that Petitioner had no documented misconduct until shortly after he was assaulted and while he was navigating the personal and professional impact of his injuries and LIMDU status. Additionally, the Board observed that Petitioner has committed himself toward a public service in a profession supporting the safety and health of his community's infrastructure with wastewater management and addition to the positive reflections his character letters document with respect to his volunteerism and self-sacrificing assistance to his neighbors and to helping with their farms. The Board found that the totality of favorable factors Petitioner submitted with respect to his post-discharge character, in addition to liberal consideration of his significant in-service trauma, sufficiently outweighed the misconduct evidenced by his NJPs and SPCM conviction to warrant relief. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's reentry code remains appropriate in light of his unsuitability for future military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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 20 August 1990, his "Honorable" discharge was issued under the authority of "MILPERSMAN 3630900," for the narrative reason of "Secretary Plenary Authority," with a separation code of "JFF."

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.

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.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

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.

6/12/2024

