



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

█
Docket No. 8605-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USN,
█

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) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

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

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 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 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a 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 enlisted in the United States Navy and began a period of active service on 8 March 2005.

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[REDACTED]

d. From 16 July 2005 to 20 February 2006. Petitioner was deployed on the [REDACTED] in support of Operation Iraqi Freedom. On his Post-Deployment Health Assessment (PDHA) reports “little interest or pleasure in doing things” and some “feeling down, depressed, or hopeless.”

e. On 3 November 2006, Petitioner’s grandfather passed away. Subsequent to this event, Petitioner’s mother and uncle note changes in his behavior and mood.

f. On 23 May 2007, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey a lawful order by not receiving approval prior to travel to [REDACTED], and Article 111, for driving under the influence of alcohol (DUI) (0.113 BAC). He was formally counseled due to this misconduct.

g. On 6 June 2007, the Naval Medical Center [REDACTED] completed a psychological and alcohol-drug assessment evaluation of the Petitioner after command referral due to the DUI incident in May. The report concluded that there was “no psychiatric diagnosis or condition AXIS I or AXIS II” and declared Petitioner fit for duty without limitations. During the examination, Petitioner reported sometimes experiencing loss of motivation and “sees this as depression... since grandfather died in December 2006.” However, Petitioner did not meet criteria for a formal mental health diagnosis and was offered a referral to “counseling via FFSC [Fleet and Family Services Center] to deal with grief issues.”

h. On 29 October 2007, Petitioner was found guilty at Summary Court Martial (SCM) of violating UCMJ Article 85, for desertion (32-day period of unauthorized absence), Article 87, for missing movement, and Article 121, for larceny. He was sentenced to 30 days confinement and forfeitures of 2/3 pay per month for one month.

i. Ultimately, on 3 January 2008, Petitioner was discharged from the Navy with an Other Than Honorable (OTH) characterization of service based on his pattern of misconduct and assigned an RE-4 reentry code.

j. In February 2009, Petitioner was evaluated by the Department of Human Services in Arlington, VA., and diagnosed with “AXIS I: Depressive disorder not otherwise specified” and “Post Traumatic Stress Disorder (PTSD).” However, records did not include evidence that the PTSD was causal in the decisions that led to Petitioner’s misconduct and subsequent separation from service.

k. On 17 February 2011 and 5 April 2022, the Naval Discharge Review Board (NDRB) denied Petitioner’s application for relief, assigning more weight to his in-service medical evaluations than his post-service medical treatment. The NDRB determined that Petitioner’s discharge was proper as issued and that no change was warranted.

l. Petitioner contends he incurred mental health concerns during military service due to the strain of the military environment and personal stressors, including the death of his grandfather and his deployment in support of Operation Iraqi Freedom. In support of his request, he provided evidence from a civilian mental health provider noting diagnoses of PTSD and

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“Major Depressive Disorder, recurrent, moderate, with psychosis” (MDD). As part of the Board’s review process, a qualified mental health professional reviewed Petitioner’s contentions and the available records and issued an AO dated 12 March 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of mental health diagnosis during military service was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. While he did acknowledge grief associated with the death of his grandfather during military service, he specifically denied experiencing mental health symptoms of a significantly interfering level to warrant a diagnosis.

Post-service, the Petitioner has received diagnoses of PTSD and depression that have been attributed to military service. It is possible that mild mental health symptoms noted in service worsened with the passage of time to reach the level of clinical diagnosis following separation from service.

Unfortunately, there is insufficient evidence to attribute his in-service misconduct to a mental health condition. More weight has been given to his in-service denial of symptoms over post-service reports of symptom interference. The traumatic precipitants described in the Petitioner’s statement and by his civilian provider in 2022 do not meet Diagnostic and Statistical Manual of Mental Disorders (DSM-V) criterion A for a diagnosis of PTSD. Additionally, theft is not a symptom associated with PTSD or depression, and it is difficult to attribute that behavior to a mental health concern.

The AO concluded, “it is my clinical opinion there is post-service evidence from civilian mental health providers of diagnoses of PTSD and 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.”

m. On 11 April 2024, Petitioner submitted a rebuttal to the AO, arguing that the AO should not be entitled to greater weight than a mental health professional who actually performed an evaluation of Petitioner. His post-service diagnosis is supported by his in-service record; specifically, the disclosures that Petitioner made as part of his PDHA, as well as the behavioral changes noted over the course of his service. The Ph.D. reviewed the rebuttal statement and, as no new medical evidence was submitted, the original AO remained unchanged.

CONCLUSION:

After careful review and consideration of all of the evidence of record, the Board determined that relief is warranted.

Because Petitioner based his claim for relief upon mental health conditions, his application was

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reviewed in accordance with the guidance of references (b) through (e). Accordingly, the Board applied liberal consideration to Petitioner's contention. In this regard, the Board concluded that Petitioner may have been suffering from undiagnosed mental health conditions during his military service. Although Petitioner did not receive a formal mental health diagnosis while in the service, his noted behavioral changes may have been undiagnosed symptoms of PTSD. His post-service diagnoses occurred almost immediately after his service, and have remained consistent over time. In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board felt that Petitioner's undiagnosed mental health conditions were a possible causative factor for the misconduct that formed the basis of his discharge and therefore mitigated his conduct. After viewing the nexus between Petitioner's service and his subsequent misconduct, the Board concluded that no useful purpose is served by continuing to designate Petitioner's separation as OTH, and that an upgrade to General (Under Honorable Conditions) (GEN) is appropriate.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable (HON) discharge. The Board highlighted that an HON discharge is appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even though flawless service is not required for an HON discharge, a GEN discharge is still the appropriate characterization in this case considering the severity of Petitioner's misconduct.

The Board also concluded that Petitioner's narrative reason for separation, separation code, and reenlistment code should remain unchanged. Although the Board found that the mitigating information warrants a characterization upgrade, the basis for separation and the fact that he was not recommended for reenlistment remains accurate and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of his discharge. Ultimately, the Board determined that 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.

Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, indicating that, on 3 January 2008, the characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to the 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.

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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.

5/14/2024

