



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

██████████
Docket No. 9853-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER ██████████, USN,
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)
(d) USD Memo, 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo, 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion dated 17 May 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Navy filed enclosure (1) with this Board requesting that his characterization of service be upgraded. Enclosures (2) through (4) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 31 July 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 (e). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to comment on the AO, 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.

c. Petitioner entered active duty with the Navy on 28 June 2002. On 2 October 2003, he received non-judicial punishment (NJP) for wrongful use of a controlled substance.

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d. Unfortunately, the documents pertinent to Petitioner's administrative separation are 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. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 24 October 2003 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct," his separation code is "HKK," and his reenlistment code is "RE-4."

d. In his application, Petitioner asserts that he incurred PTSD or mental health concerns during military service, which may have mitigated the circumstances of his separation, his mental illness was due to the way he was discharged, and his discharge is the result of a one-time incident. Further, he contended that he is married, remained trouble free, and is working for a trucking company.

e. Based on Petitioner's assertion of a PTSD/mental health condition, enclosure (4) was requested and reviewed. It stated in pertinent part:

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. He submitted evidence of post-service diagnosis of Generalized Anxiety Disorder; however, the etiology or rationale for the diagnosis is not included with the evidence submitted. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient 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 concludes that Petitioner's request warrants relief.

In keeping with the letter and spirit of the Wilkie Memo, the Board determined that it would be an injustice to continue to characterize Petitioner characterization of service as OTH. Specifically, the Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions and re-characterization to a General (Under Honorable Conditions) is now more appropriate. In making this finding, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition. However, while not condoning his misconduct, after weighing the mitigation evidence provided by Petitioner against his misconduct, and reviewing

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his record holistically, the Board determined that it was in the interests of justice to grant relief in his case purely as a matter of clemency.

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 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 and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, based on his misconduct, the Board found no error or injustice with Petitioner's narrative reason for separation, separation authority, separation code, or reentry code. 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) that shows that, on 24 October 2003, his 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.

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.

8/20/2024

