



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

██████████
Docket No. 9995-23
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) 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) of 12 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 that her late husband's discharge be upgraded to Honorable and that his final discharge record reflect his minority enlistment and his correct awards. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 31 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 husband's naval record, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (2), the advisory opinion (AO) furnished by 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. Although Petitioner did not file her application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner's husband enlisted in the Navy as a minor and began a period of active duty on 24 July 1961. He served honorably through the expiration of his term of his enlistment on 29 December 1964 and immediately reenlisted for a second period of service beginning on 30 December 1964.

c. Petitioner's husband completed four years of Honorable service on 23 July 1965 and was awarded the Good Conduct Medal (GMC). A naval letter from the Chief of Naval Personnel, dated 12 February 1968, documents that this award was issued to him on 14 March 1966.

d. During his second period of service, Petitioner's husband was subject to extensive disciplinary action to include six occasions of nonjudicial punishment (NJP), summary court-martial (SCM), and a special court-martial (SPCM); beginning with his first NJP on 8 March 1966 for an incident of petty theft.

e. The totality of Petitioner's husband's violations of the Uniform Code of Military Justice (UCMJ) included four violations of Article 86, unauthorized absence (UA), Article 92, failure to comply with technical arrest orders after being apprehended by civil authorities following a period of UA, Article 121, larceny of a wallet containing \$12, Article 128, assault, and three specifications of Article 134, for breaking restriction, creating a disturbance, and being incapacitated for proper performance of duty.

f. By the time Petitioner's husband received his fifth NJP on 14 November 1967, he was recommended for administrative discharge. However, he continued serving and absented himself without authority on 19 March 1968. He was apprehended by civil authorities, on 9 April 1968, and returned to military control, following which he was tried and convicted by SPCM for his UA period. Although his sentence included reduction to E-1 and 3 months of confinement with concurrent forfeitures of pay, he was not adjudged a punitive discharge.

g. Approximately two months after his release from confinement, Petitioner's husband again absented himself, on 2 October 1968, and was apprehended 6 days later by civil authorities. He was issued technical arrest orders which he failed to execute as ordered, and was subject to a sixth and final NJP, on 29 October 1968, for two periods of UA and for his orders violation.

h. On 12 November 1968, Petitioner's husband was finally issued notice of discharge by reason of unfitness due to his frequent involvement of a discreditable nature with military authorities. He elected to waive his rights incident to this notification, and the recommendation for his undesirable discharge was forwarded the following day for review and approval.

i. Although documentation of the final decision on this recommendation was not available in Petitioner's husband's service record, he was discharged under Other Than Honorable conditions, on 12 December 1968, for the reason of unfitness due to his frequent involvement with military authorities and was issued a Report of Transfer or Discharge (DD Form 214). However, the record of his awards included only a National Defense Service Medal (NDSM) and an Armed Forces Expeditionary Medal with one bronze star.

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j. Petitioner's husband previously applied to the Board on three occasions with each request being denied. His first request was denied on 7 March 2006 wherein he asserted that his UA status was due to awaiting surgery and that he was discharged due to combination of personal and medical problems. However, the Board found that his record contained no evidence to support his assertions and he provided no further supporting evidence.

k. His second request was denied on 25 September 2015 after consideration of statements by both him and the VA pertaining to his disability rating decision of April 2013. Petitioner's husband contended that he suffered from service connected post-traumatic stress disorder (PTSD), which the Board determined he did suffer during his military service. Although the Board noted that there appeared to be a causal link between some of his offenses and his PTSD, the severity of his misconduct and totality of his offenses, to include larceny and his UA period resulting in his SPCM conviction, were of such severity as to outweigh the potentially mitigating factor of his PTSD. The Board also noted that a psychiatric examination in November of 1967 did not recommend him for separation; therefore, the Board concluded that his condition was not so severe as to excuse the SPCM and sixth NJP which occurred after his evaluation. Thus, the Board affirmed its previous decision.

l. The Board reconsidered Petitioner's request for review of her husband's PTSD claims for a third time on 7 September 2022. Petitioner asserted that her husband incurred PTSD during his first period of enlistment which ultimately resulted in the misconduct of his second enlistment, that his second enlistment was cut short due to his PTSD and physical pain; that his medications caused him to be lethargic and argumentative, that he committed the theft to draw attention to himself and the difficulties he was experiencing; that his PTSD symptoms and behaviors escalated due to lack of proper treatment, that lack of help and improper medication led to a weakened mental state, and that the merit of his service during his first enlistment and his resulting PTSD should be sufficient to upgrade his final characterization of service from his second enlistment. However, upon consideration of all potentially mitigating factors, the Board reaffirmed its previous decision that Petitioner's husband's misconduct was of such seriousness as to show a complete disregard for military authority and regulations and continued to warrant an other than honorable characterization for his second period of service even after applying liberal consideration.

m. Petitioner now contends that an "appeal judge," presumably related to an administrative claim with the Department of Veterans Affairs (VA), declared that her husband incurred post-traumatic stress disorder (PTSD) during his first enlistment and enclosed new evidence of his recent VA progress notes from 2023 prior to his passing. Records previously considered were also provided, to include his 2013 disability rating from the VA.

n. Because Petitioner contends that a mental health condition contributed to the misconduct of her husband's second period of enlistment, and therefore affected his discharge, the Board requested the AO at enclosure (2) for consideration, which provided the following analysis:

During military service, [Petitioner's husband] was diagnosed with mental health concerns, including an anxiety reaction, an alcohol use disorder, and personality disorder. Temporally remote to his military service, he has been granted service

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connection for mental health concerns and has received a diagnosis of PTSD from VA providers. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct. It is possible that UA, problematic alcohol use, and aggressive behavior could be attributed to undiagnosed symptoms of PTSD irritability and avoidance. However, theft and financial mismanagement are not typical symptoms of a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion."

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. The Board reviewed her application under the guidance provided in references (b) through (e).

Regarding Petitioner's request for a discharge upgrade for her husband, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in her case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, her desire for a discharge upgrade and her previously discussed contentions. For purposes of clemency and equity consideration, the Board considered the evidence she provided in support of her application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's husband's misconduct, as evidenced by his NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that, although there is evidence of a post-service diagnosis of PTSD which the VA has attributed to Petitioner's husband's first period of service, misconduct such as theft is not generally due to a symptom or behavior of PTSD. Therefore, consistent with the Board's previous decisions, even applying liberal consideration, the Board concluded that Petitioner's husband's misconduct was of such frequency and severity as to outweigh the potentially mitigating factor of his PTSD. Finally, the Board noted Petitioner's husband was provided multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct.

As a result, the Board concluded Petitioner's husband's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record

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liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting her the discharge upgrade she requested or granting a discharge upgrade as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of her husband's misconduct.

However, the Board noted that Petitioner's husband was awarded the GCM during his second period of service after completing the requisite period of four years of service without misconduct; but record of this award was not entered into his discharge record. The Board found this omission to be clear evidence of error. Therefore, the Board determined a correction of the omitted entry is warranted and, additionally, a review of his entire service record to confirm his potential entitlement to any other personal or service awards which may have been omitted from Petitioner's husband's discharge record.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's record be reviewed to determine his entitlement to awards and decorations.

That the subject service member be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 12 December 1968, indicating that he was awarded the GCM and any other awards for which his eligibility is identified during the review of his record.

That no further changes be made to subject service member's record.

A copy of this report of proceedings be filed in subject service member'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.

6/25/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]