



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

██████████  
Docket No. 10255-23  
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 24 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 his discharge be upgraded to either “Honorable” or “General under Honorable Conditions” and that his narrative reason for separation be changed to “Secretarial Authority.” Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 26 June 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 considered the advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner.

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.

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b. Petitioner enlisted in the Navy and began a period of active duty on 16 July 2001. Prior to his enlistment, he was subject of an investigation by U.S. Air Force criminal investigators for selling marijuana in the commissary parking lot of [REDACTED]. As a result, his prior criminal history included a class 4 felony offense of possession of burglary tools and the sale of marijuana, which was later amended to a misdemeanor. He did not report any of this prior criminal history or involvement with illegal drugs at the time of his application for enlistment.

c. On 21 August 2001, Petitioner completed an SF86, Security Questionnaire, for purposes related to his security clearance. With respect to his police record, he denied a history of felony offenses, which he was required to report even if the offense had been stricken from the record. He also denied any other offenses and any illegal drug activity.

d. Due to discovery of his criminal history, Petitioner was notified of processing for administrative separation on 6 February 2002. However, his commanding officer recommended retention and, on 30 August 2002, Petitioner was officially granted a waiver for fraudulent enlistment in spite of his failure to disclose his criminal history.

e. Petitioner's evaluation reports during his tour of duty aboard the [REDACTED] reflected above average performance, to include performing additional duties outside of his duty assignment and volunteering to provide barber services to crew to avoid degradation of services and to ensure his fellow service members could maintain grooming standards.

f. Petitioner transferred to the [REDACTED] and served without incident for nearly four years until on 21 June 2005, he absented himself without authority. He remained in an unauthorized absence (UA) status until 4 January 2006, at which time he requested separation in lieu of trial (SILT) after consultation with military defense counsel. His request was approved on 25 January 2006, with a response that stated "It is expressly understood that approval of your separation is in lieu of trial by court-martial on the charge of violation of Article 86, Uniform Code of Military Justice" (UCMJ), and he was discharged under Other Than Honorable conditions on 16 February 2006.

g. Petitioner previously applied to the Naval Discharge Review Board (NDRB) on two occasions. NDRB initially conducted a documentary review of his record on 1 March 2013. He contended that he had been distraught when his father went to prison for molesting his sister and that he had sought help from his chain of command, which had been unresponsive to his requests. Of note, in denying his request for an upgraded characterization of service, NDRB stated that it did not have a complete request for his SILT "to confirm which charges the Applicant admitted guilt to." Petitioner subsequently requested an in-person hearing to review his request for relief, which NDRB conducted on 27 February 2019. He submitted the same mental health contentions for review under liberal consideration guidance with the addition of clemency contentions; however, as noted in the NDRB denial, he did not submit any documentary evidence in support of clemency.

h. NDRB Docket No. ND17-01553 noted in its 2019 review the following administrative error in Petitioner's discharge record: Block 13, Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized should read, "NATIONAL DEFENSE SERVICE

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MEDAL, GLOBAL WAR ON TERRORISM SERVICE MEDAL, SEA SERVICE DEPLOYMENT RIBBON, GOOD CONDUCT MEDAL.” The NDRB review indicated that it would recommend to Commander, Navy Personnel Command, to issue an appropriate correction; however, Petitioner’s official military personnel file contains no record of such correction having been issued in the interim between 2019 and the present.

i. Petitioner contends that post-traumatic stress disorder (PTSD) is a mitigating factor in the misconduct which resulted in his discharge in lieu of trial by court-martial for his sole offense of a period of unauthorized absence (UA). For purposes of clemency and equity consideration, he provides his PTSD Disability Benefits Questionnaire (DBQ) from the Department of Veterans Affairs (VA), medical records, a personal declaration, and a letter from his social worker which describes not only his character but his community service and volunteerism, which includes making sandwiches to take to a local shelter.

j. Petitioner’s declaration describes the incident which led to his UA period. He was approached on 21 June 2005 by another service member who threatened him with a knife, accused him of stealing his audio player, and stated that he would kill him if he did not leave the ship. He felt that the threat to his life was credible, he began hyperventilating and his heart was racing, and he felt that he had to leave the ship immediately for his own safety. Upon leaving he returned to his home of record and experienced trouble sleeping and frequent nightmares about the incident, to include anxiety and panic attacks, depression, and difficulty concentrating. Upon returning home, he also discovered that his sister was pursuing criminal charges against his father for molesting her. While UA, he supported his sister as she testified at the trial against his father. His father was found guilty of child molestation and sentenced to eight years in prison. Petitioner states that he had previously been close to his father and was devastated to learn that he had molested his sister. He states that, while facing trial for his period of UA, he had an opportunity to return to the Navy and continue serving, but he declined due to continued feelings of anxiety related to the threat against his life that he had received after being stationed aboard the [REDACTED].

k. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested the AO at enclosure (2) for consideration. The AO stated in pertinent part:

Post-service, a VA clinician has determined a diagnosis of PTSD that may be attributed to military service. It is possible that his UA could be related to avoidance consistent with PTSD. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may strengthen the opinion.

The AO concluded, “it is my clinical opinion there is post-service evidence from a VA clinician of a diagnosis of PTSD that may be attributed to military service. There is some-post service evidenced to attribute his misconduct to PTSD.”

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of full 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 that it is possible Petitioner's period of UA could be related to avoidance of his traumatic stressor consistent with his post-service diagnosis from the VA of PTSD. In light of concurring with the favorable AO, the Board found that the mitigating factors Petitioner submitted for consideration sufficiently outweighed the sole misconduct of his UA offense. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) and change his basis for separation to reflect a Secretarial Authority discharge.

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.

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 16 February 2006, his "General (Under Honorable Conditions)" discharge, was issued under the authority of "MILPERSMAN 3630900," with a separation code of "JFF," a narrative reason for separation of "Secretarial Authority," and a reentry code of "RE-1J."

Further, Block 13 of Petitioner's DD Form 214 shall be corrected to reflect all awards to which he is entitled, to include the Sea Service Deployment Ribbon and Good Conduct Medal.

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.

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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 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.

7/11/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]