



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

■  
Docket No. 10432-23

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) 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) USECDEF Memo of 25 Aug 2017 (Kurta Memo)  
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments  
(2) Naval record (excerpts)  
(3) Advisory opinion of 25 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 for an upgrade of his characterization of service.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■ and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 8 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). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional, that was considered favorable toward 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 regulation 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 enlisted in the Navy and began a period of active duty on 19 February 2002.

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d. On 29 November 2004, Petitioner commenced a period of unauthorized absence (UA) that concluded upon his return to military authorities on 17 September 2005.

e. Unfortunately, the documents pertinent to Petitioner's administrative separation are not 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. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that Petitioner submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, Petitioner would have conferred with a qualified military lawyer, been advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner would have acknowledged that his characterization of service upon discharge would be an OTH.

f. On 19 October 2005, Petitioner was discharged from the Navy with an OTH characterization of service, the narrative reason for separation is "In Lieu of Trial by Court Martial" separation authority is "MILPERSMAN 1910-106," Petitioner's reentry code is "RE-4," and separation code is "KFS," which corresponds to in lieu of trial by court martial.

g. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade, on 5 February 2013, based on their determination that Petitioner's discharge was proper as issued.

h. Petitioner contends the following injustices warranting relief:

(1) He fell into a deep depression and was offered counseling and medication;

(2) He felt the pressure of having overnight duty, claustrophobia, depression, anxiety and panic attacks and was still facing his biggest issue of sleeping on the ship and wearing a gas mask; and

(3) He went into a UA status because he did not know how to get help to heal his claustrophobia, which gave him panic attacks.

i. For purposes of clemency and equity consideration, the Board considered the supporting documentation Petitioner provided in support of his application.

j. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition. While he may have experienced symptoms prior to entering service, it is plausible that his symptoms may have been exacerbated by military service. The Petitioner claims that his mental health symptoms contributed to his UA and has

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been consistent in his contentions across time. It is possible that the Petitioner's UA could be related to avoidance associated with his mental health concerns. While it is difficult to attribute his extended absence solely to avoidance, it is reasonable to consider that his mental health concerns contributed to his UA. 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 in-service evidence of a mental health condition that may be attributed to military service. There is evidence to attribute his misconduct to a mental health condition."

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

The Board found no error in Petitioner's OTH characterization of service discharge for separation in lieu of trial by court martial. However, because Petitioner based his claim for relief in whole or in part upon his mental health condition (MHC), the Board reviewed his application in accordance with the guidance of references (b) through (e).

Accordingly, the Board applied liberal consideration to Petitioner's claimed MHC and the effect that it may have had upon his misconduct. In this regard, the Board substantially agreed with the AO in that there is in-service evidence of a mental health condition that may be attributed to military service, and there is evidence to attribute Petitioner's misconduct to a mental health condition.

In applying liberal consideration to Petitioner's MHC and any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's MHC may have had upon his misconduct. After thorough review, the Board found that Petitioner's MHC did have an effect on his misconduct and the mitigating circumstances of his MHC outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN).

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 service 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 outweighed the positive aspects of his military record even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate.

Further, the Board determined Petitioner's narrative reason for separation, separation authority, separation code, and reentry code remain appropriate in light of his misconduct and unsuitability

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for further military service. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that, for the period ending 19 October 2005, Petitioner's character of service was "General (Under Honorable Conditions)."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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 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.

5/23/2024

