



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

█
Docket No. 10551-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF █, █,
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 22 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 to Honorable. 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. After a period of Honorable service, Petitioner reenlisted in the Navy on 10 July 1984. On 17 February 1988, he tested positive for amphetamines/methamphetamines on a command's sweep

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urinalysis. On 8 March 1988, he once again tested positive for amphetamines/methamphetamines while on the command's urinalysis surveillance program. On 17 March 1988, Petitioner received non-judicial punishment (NJP) for wrongful use of amphetamines/methamphetamines. Consequently, he was notified of pending administrative separation action by reason of misconduct due to drug abuse. Petitioner elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). He also received a medical evaluation, which determined that there were no evidence of addiction and no rehabilitation treatment was required. The ADB found that he committed misconduct and recommended an Other Than Honorable (OTH) characterization of service. The separation authority concurred with the ADB and directed an OTH discharge by reason of misconduct due to drug abuse. On 17 May 1988, he was so discharged.

d. In his application, Petitioner asserts that he incurred PTSD or a mental health concerns during military service, which may have mitigated the circumstances of his separation due to personal family problems..

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 other than Alcohol Use Disorder and Personality Disorder. There is nothing contained within his service or medical record that indicates a diagnosis of PTSD. He did experience many acute life stressors while in service, e.g., marital discord and financial stress, however these do not typically warrant use of methamphetamine as a means of coping. Furthermore, his belligerent and angry demeanor while hospitalized the second time, and physical abuse within the marriage suggests that Alcohol Use Disorder and Personality Disorder were more accurate diagnoses given him. Additional records (e.g., all 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 qualifying 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."

f. Petitioner contends he made a mistake during a trying time in his life and has regretted his actions since that time.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief.

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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's 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 noted Petitioner's disciplinary infractions and does not condone his misconduct; however, after weighing Petitioner's overall record in the Navy against the nature of his misconduct, and reviewing his record holistically, the Board determined it was in the interests of justice to upgrade Petitioner's characterization of service 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 record of 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 17 May 1998, 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

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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

