



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

██████████  
Docket No. 23-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████  
██████████

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 9 May 2024

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 ██████████ reviewed Petitioner's allegations of error and injustice on 3 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, 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 U.S. Navy and began a period of active duty on 14 September 2001. In 2005, he received non-judicial punishment (NJP) for wrongful use, possession, etc., of a controlled substance.

d. Unfortunately, some documents pertinent to the Petitioners 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. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 29 July 2005 with an Other Than Honorable (OTH) characterization of service, narrative reason for separation is "Misconduct," separation code is "HKK," and reenlistment code is "RE-4."

e. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade on 15 March 2007, based on their determination that the discharge was proper as issued.

f. Petitioner contends that he takes pride in his military service but he has struggled with PTSD due to in-service stressors. He further contends that this current characterization is holding him back. For purposes of clemency and equity consideration, the Board noted the Petitioner provided Department of Veterans Affairs documents, a personal statement, OMPF documents, and the NDRB decision letter.

g. 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:

Petitioner contended he incurred PTSD from "high risk security missions...in Iraq." He provided evidence of post-service accomplishment. He has been granted service connection for PTSD, effective September 2006. He submitted extensive evidence of received treatment for combat-related PTSD through the Department of Veterans Affairs (VA). Records indicate the Petitioner was diagnosed with PTSD during military service. Although there is evidence of pre-service marijuana use, it is possible that his post-deployment marijuana use could be considered a behavioral indicator of self-medication of PTSD symptoms.

The AO concluded, "it is my clinical opinion there is in-service evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence to attribute his misconduct to PTSD."

## CONCLUSION

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

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e).

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[REDACTED]

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

In applying liberal consideration to Petitioner's mental health condition 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 accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's mental health condition may have had upon his misconduct. After thorough review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his mental health condition 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).

Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, separation code, should be changed 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. Additionally, the Board determined Petitioner's assigned reentry code remains appropriate based on his unsuitability for further military service. Ultimately, the Board determined 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, for the period ending 29 July 2005, indicating that Petitioner's characterization of service was "General (Under Honorable Conditions), his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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.

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[REDACTED]

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.

7/11/2024

[REDACTED]