



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

█
Docket No. 0181-24

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)
(c) USECDEF Memo of 25 Aug 17 (Kurta Memo)
(d) SECDEF Memo of 13 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Advisory Opinion of 24 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 his discharge be upgraded. Enclosures (1) through (2) apply.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 12 August 2024 and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, and applicable statutes, regulations, and policies. In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to 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. Petitioner enlisted in the U.S. Navy and began a period of active duty on 15 January 1991. He completed a period of continuous Honorable service and immediately reenlisted on

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[REDACTED]

30 October 1996.

d. Unfortunately, the documents related to Petitioner's administrative separation are not in his official military personnel file (OMPF). In this regard, 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 (as is the case at present), will presume that they have properly discharged their official duties.

e. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 5 February 1998 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct," his separation code is "HKQ (Misconduct-Commission of a Serious Offense)," and his reenlistment code is "RE-4." His DD Form 214 does not document his period of continuous Honorable service from 15 January 1991 through 29 October 1996.

g. Petitioner contends that he suffered from undiagnosed PTSD (post-traumatic stress disorder) during military service. Specifically, he states that his discharge "was the result of failing a drug test. I tested positive for marijuana in 1997, when at the time I was suffering from an undiagnosed extreme amount of stress and PTSD." He adds, it was a one-time use, and he completed his initial four years under honorable conditions as well as a one-year reenlistment and one-year enlistment extension.

h. For purposes of clemency and consideration, the Board noted Petitioner did not provide documentation describing post-service accomplishments or advocacy letters.

i. In connection with Petitioner's assertions that he incurred PTSD during military service, which might have mitigated the circumstances of his separation, the Board reviewed, enclosure (3). The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. His provided medical evidence is temporally remote to his military service and appears unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to PTSD or another mental health condition."

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[REDACTED]

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action in the form of partial relief. Specifically, as previously discussed, Petitioner's period of continuous Honorable service was not documented on his DD Form 214 and requires correction.

With regard to Petitioner's request that his characterization of service be upgraded, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Kurta, Hagle, and Wilkie Memos. These included, but were not limited to, Petitioner's desire for a discharge upgrade and the previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board considered Petitioner's administrative separation for misconduct and determined the presumption of regularity applies in his case. In making this finding, the Board noted Petitioner provided no evidence, other than his application, in support of his case. Further, the Board concurred with the AO that there is insufficient evidence to attribute the circumstances of Petitioner's separation to PTSD or another mental health condition. As explained in the AO, the medical evidence provided by the Petitioner is temporally remote to his military service and appears unrelated.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Kurta, Hagle, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting relief as a matter of clemency or equity.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 5 February 1998, indicating his continuous Honorable service for the period of 15 January 1991 through 29 October 1996.

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.
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

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[REDACTED]

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.

9/11/2024

