



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

██████████
Docket No. 507-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████ USN,
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo) (Hagel Memo)
(c) PDUUSD Memo 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 August 2017 (Kurta Memo)
(e) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 naval record be corrected to upgrade his discharge characterization and make certain conforming changes to his DD Form 214 following his involuntary discharge for a diagnosed personality disorder.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 19 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 an advisory opinion (AO) furnished by qualified mental health provider and the Petitioner's AO rebuttal submission.

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.

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c. The Petitioner enlisted in the U.S. Navy and began a period of active duty service on 18 April 2005. Petitioner's pre-enlistment physical examination, on 18 May 2004, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 13 August 2005, Petitioner commenced a period of unauthorized absence (UA) that terminated on 15 August 2005. On 25 August 2005, Petitioner commenced a UA that terminated on 3 September 2005. On 4 September 2005, Petitioner commenced a UA that terminated on 5 September 2005.

e. On 9 September 2005, Petitioner received non-judicial punishment (NJP) for his three (3) separate UA offenses, as well as a conspiracy charge. Petitioner did not appeal his NJP.

f. On 14 September 2005, Petitioner's command issued him a "Page 13" retention warning (Page 13) documenting deficiencies related to his NJP offenses. The Page 13 advised him that any further deficiencies in his performance and/or conduct may result in disciplinary action in addition to processing for an administrative separation.

g. On 10 September 2009, Petitioner was inpatient admitted to the mental health clinic at Naval Medical Center, [REDACTED]. An examining Medical Officer (MO) initially noted Petitioner's 5-day inpatient hospitalization back in 2005 for visual hallucinations, depression, and suicidal ideation. The MO diagnosed Petitioner with an adjustment disorder with depressed mood, and a personality disorder, not otherwise specified (antisocial and borderline). The MO determined that the personality disorder diagnosis was the primary diagnosis. The MO strongly recommended Petitioner's expeditious administrative separation on the following grounds:

(a) service member has a behavioral condition that impairs the member's performance, but does not amount to a disability, (b) this condition obviates the member's potential for continued Naval Service, (c) medical avenues are unlikely to be of further benefit to the service member, (d) the member is judged to represent a risk to self or others if retained on active duty, and (e) the member is deemed fit to return to duty for processing for administrative separation in compliance with MILPERSMAN 1910-122.

h. Following the medical recommendation, Petitioner's command initiated administrative separation proceedings by reason of convenience of the government on the basis of his diagnosed personality disorder. The least favorable discharge characterization Petitioner could receive was General (Under Honorable Conditions) (GEN). Ultimately, on 17 September 2009, Petitioner was discharged from the Navy with a GEN discharge characterization and was assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Personality Disorder."

i. On 4 September 2012, the Naval Discharge Review Board (NDRB) denied Petitioner's discharge upgrade application. The NDRB determined that Petitioner's discharge was proper as issued and that no changes were warranted.

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j. As part of the Board review process, a licensed clinical psychologist (Ph.D.), reviewed Petitioner's contentions and the available records, and issued an AO dated 31 May 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions, including during two inpatient hospitalizations. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. While the Petitioner was able to complete a successful portion of service despite his characterological difficulties, multiple clinicians considered his case and confirmed the diagnosis, including his VA clinician following separation from service. There is insufficient evidence of error in his in-service personality disorder diagnosis.

A notation of NOS following a diagnosis does not mean that the diagnosis is not present. It merely indicates that the symptom cluster either crosses multiple diagnoses within the category or is present to a clinically meaningful level and does not meet all symptom criteria of a specific diagnosis within the category. For example, the Petitioner received a diagnosis of PDNOS with dependent, avoidant, compulsive, and schizotypal features in August 2005, indicating he demonstrated significant characterological impairment, and reported symptoms across several specific personality disorders. In September 2009, the Petitioner's PDNOS diagnosis was confirmed during his second hospitalization. During that hospitalization, the Petitioner reported and demonstrated symptoms consistent with both Antisocial and Borderline personality disorder diagnoses. Although the ascribed features of the Petitioner's personality disorder varied across his two hospitalizations, what is consistent is the disorder of character detected during two independent periods of prolonged observation.

Unfortunately, the Petitioner has provided no medical evidence to support his claims of erroneous diagnosis. His in-service misconduct appears to be consistent with his diagnosed character disorder. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of error in the in-service diagnosis of personality disorder."

k. Following a review of Petitioner's AO rebuttal, the Ph.D. did not change or otherwise modify their original AO.

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CONCLUSION:

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

The Board initially determined that Petitioner's administrative separation for a substantiated personality disorder was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge. The Board disagreed with any contention that Petitioner was either misdiagnosed, and/or that the Petitioner's command did not substantially comply with the procedural requirements of the relevant MILPERSMAN provision (1910-122). The Board determined that Petitioner's expeditious processing for an administrative separation was justified because Medical Officers determined that Petitioner represented a risk to himself or others if retained on active duty.

Additionally, the Board noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that Petitioner's diagnosed personality disorder was a non-disabling disorder of character and behavior, and that it did not impair his ability to be accountable for his actions or behaviors. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions.

However, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

The Board, however, did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined the record reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. The Board determined that characterization under Other Than Honorable conditions (OTH) or GEN conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Therefore, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading Petitioner's characterization of service or granting clemency in the form of an

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upgraded characterization of service and/or making additional conforming changes to his DD Form 214.

Further, notwithstanding the relief granted below, the Board did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of Petitioner's discharge. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, for the period ending 17 September 2009, indicating his narrative reason for separation is "Secretarial Authority," the separation authority is "MILPERSMAN 1910-164," and the separation code is "JFF."

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

7/26/2024

