



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

██████████
Docket No. 529-24
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) Title 10 U.S.C. § 1552
(b) USD Memo, 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo, 25 Jul 18 (Wilkie Memo)
(d) PDUSD Memo, 4 Apr 24 (Vazirani Memo)
(e) Petitioner's Case File

Encl: (1) DD Form 149
(2) Advisory Opinion, 13 Jun 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 that his naval record be corrected by granting a medical retirement.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 1 August 2024 and, pursuant to its regulations, determined that 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 the naval records, and applicable statutes, regulations, and policies to include references (b) through (d) and enclosure (2), an advisory opinion (AO) furnished by a qualified medical professional. The AO 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 regulations within the Department of the Navy. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

b. Petitioner entered active duty in the United States Navy on 7 July 2015. In July 2016 Petitioner began seeking treatment from a military psychologist but received no formal mental health diagnosis; Routine Military stressors and phase of life problem were noted in his medical record. In May 2017, Petitioner was referred to Mental Health by the command chaplain and

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received a diagnosis of Schizoid Personality Disorder. On 25 May 2018, Petitioner received non-judicial punishment (NJP) for three specifications of unauthorized absence (UA). On 20 June 2018, Petitioner was medically evaluated and hospitalized following a suicide attempt by medication overdose. He was diagnosed with adjustment disorder including mixed anxiety and depressed mood and listed as not fit for full duty.

c. On 10 August 2018, Petitioner's Commanding Officer (CO) noted Petitioner developed "problems with recurrent suicidal ideation, depressed mood, poor sleep, and anxiety impacting his ability to serve productively." The CO stated, due to Petitioner's NJP for missing muster and counseling chits, he recommended separation with a General (Under Honorable Conditions) (GEN) characterization of service. Petitioner was subsequently discharged with a GEN characterization of service for condition not a disability on 1 October 2018.

d. Upon his discharge, the Department of Veterans Affairs (VA) rated Petitioner for Persistent Depressive Disorder at 70%.

e. In light of Petitioner's request, the Board considered the AO. The AO stated in pertinent part:

Petitioner was evaluated on multiple occasions during his military service. Although he initially reported minimal symptoms which did not meet criteria for a mental health diagnosis, his symptoms did appear to worsen over a period of approximately two years.

He received a diagnosis of a personality disorder by his first military service treatment provider. This 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 clinician.

Following his separation from service, the VA granted service connection for another mental health condition. Although there is no evidence of error in the clinical decisions made during the Petitioner's service, it is possible that the symptoms identified as Adjustment Disorder during service have been re-conceptualized as Persistent Depressive Disorder with the passage of time and increased understanding.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is evidence that circumstances of his separation could be attributed to a mental health condition."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting relief. Specifically, the Board concluded that sufficient evidence exists that Petitioner was unfit for continued naval service due to persistent depressive disorder. In making this finding, the Board relied upon the AO that it is possible that Petitioner's adjustment disorder

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diagnosis was correctly reconceptualized after the passage of time after his providers developed a better understanding of his condition. Further, the Board relied on the assigned VA rating for persistent depressive disorder, effective the day after Petitioner's release from active duty, to conclude that a 70% rating is appropriate. However, the Board determined the Physical Evaluation Board should conduct a final adjudication of Petitioner condition to determine whether his condition has stabilized. Therefore, the Board determined Petitioner should be placed on the Temporary Disability Retirement List.

Regarding Petitioner's request for a discharge upgrade, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (d). These included, but were not limited to, his contentions that his mental health condition should mitigate his misconduct. For purposes of clemency and equity consideration, the Board considered the evidence provided by Petitioner in support of his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP, counseling chits, and pending NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. While the Board considered the AO, it concluded the seriousness of Petitioner's continued misconduct outweighed the mitigation offered by his mental health condition. The Board noted that Petitioner was already given a large measure of clemency by his command when they chose not to impose NJP, after he continued to commit misconduct. Instead, they mitigated his misconduct based on his mental health condition. Therefore, the Board determined no further mitigation was required in Petitioner's case.

As a result, the Board concluded significant negative aspects of Petitioner's service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the references (b) through (d) and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner an upgraded characterization of service or granting an upgrade as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

Finally, the Board determined Petitioner's request for a Secretarial Authority discharge was moot based on their decision to transfer him to the Temporary Disability Retirement List.

RECOMMENDATION

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

Petitioner be found Unfit and placed on the Temporary Disability Retired List at a rating of 70%, for the following conditions:

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1. Persistent Depressive Disorder (with Insomnia Disorder), VA Diagnostic Code 9434, rated at 70%, not combat related (NCR), non-combat zone (NCZ)

Change Petitioner's narrative reason for separation and associated separation code to transfer to the TDRL. Note: Navy Personnel Command will correct any other entries affected by the Board's recommendation and will issue a DD Form 215 or a new DD Form 214, whichever one they deem appropriate, that reflects the Board's corrective action.

The Physical Evaluation Board will make a final determination of Petitioner's disability status in accordance with Title 10, U.S. Code, Section 1210. All due process rights associated with the Disability Evaluation System will be afforded to the Petitioner as part of the Physical Evaluation Board review.

The Defense Finance and Accounting Service will complete an audit of Petitioner's pay records to determine Petitioner's pay entitlements.

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

That no further changes be made to 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/26/2024

