



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

██████████  
Docket No. 1280-24

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, 3 Sep 14 (Hagel Memo)  
(c) PDUUSD 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) Advisory Opinion of 12 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 his characterization of service be upgraded and to correct his paygrade on his DD Form 214. Enclosures (1) through (3) 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 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 to include references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional and Petitioner's response to the AO.

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. Petitioner enlisted in the U.S. Navy and began a period of active duty on 6 January 2000. Upon entry onto active duty, Petitioner admitted to illegal use of a controlled substance while in the Delayed Entry Program (DEP) but a waiver was not required. Petitioner was granted a waiver for possession of stolen goods.

d. On 3 July 2001, the Petitioner received non-judicial punishment (NJP) for two specifications of breach of peace. Petitioner was issued a counseling warning and advised further deficiencies in performance or conduct may result in disciplinary action and in processing for administrative separation. On 8 May 2002, was again counseled for breach of peace, rioting, and aggravated assault.

e. On 15 July 2003, the Petitioner tested positive for marijuana. Petitioner was recommended for treatment but declined. Consequently, Petitioner was notified that he was being recommended for administrative discharge by reason of drug abuse. Petitioner was advised of, and waived his rights to consult with military counsel and waived his procedural right to present his case to an administrative discharge board.

f. Petitioner's commanding officer forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged with an Other Than Honorable (OTH) characterization of service for drug abuse. The SA approved the recommendation and, on 8 August 2003, Petitioner was discharged from the Navy with an OTH characterization of service by reason of misconduct drug abuse. Upon his discharge, he was issued a DD Form 214 that erroneously listed his paygrade as "E-5" instead of E-4.

g. In light of the Petitioner's assertion of mental health condition, the Board requested enclosure (3). A licensed clinical psychologist (Ph.D.) reviewed the Petitioner's contentions and the available records, and issued an AO dated 12 June 2024. The Ph.D. stated in pertinent part:

During military service, the Petitioner was properly evaluated and diagnosed with a personality disorder. 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 evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. There is no evidence of another mental health condition in military service. He has provided no evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in service. 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 a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is

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insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than personality disorder.”

h. In response to the AO, Petitioner provided a statement and documentation that supplied additional clarification of the circumstances of his case. After reviewing the rebuttal evidence, The AO stated in pertinent part:

Reviewed rebuttal records, to include a July 2024 mental health evaluation in which the Petitioner arrived "to the walk-in clinic for a mental health evaluation as requested by the VA...he has not received prior treatment for PTSD or related symptoms...[and] reports no prior diagnosis." Diagnoses of PTSD, anxiety, and Recurrent Major Depressive Disorder, remission status unspecified, were noted. The current evaluation does not provide materially different information from what has been previously presented. More weight has been given to the in-service mental health evaluation and the passage of time before symptoms became sufficiently interfering to warrant treatment. Current diagnoses are temporally remote to military service and may be unrelated.

The original AO remained unchanged.

i. Petitioner contends he served honorably for three years and four months with the plan to go as far as he could go, but felt like a criminal since the day the Navy kicked him out. Petitioner contended that he self-medicated with marijuana a couple times because he was never offered any help for his PTSD. For purposes of clemency and equity consideration, the Board considered the evidence provided in support of Petitioner’s application.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner’s request warrants partial relief. Specifically, Petitioner’s paygrade on his DD Form 214 is erroneous and should be corrected based on his request.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner’s request for an upgrade in characterization of service. 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, Hagel, and Wilkie Memos. These included, but were not limited to, Petitioner’s desire for a discharge upgrade and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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. Further, the Board considered the fact Petitioner’s misconduct included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the

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safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Finally, the Board concurred with the AO and determined there is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than personality disorder. As pointed out in the AO, there is no evidence of another mental health condition in military service and the medical evidence he provided was temporally remote to his military service.

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. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Kurta, Hagel, 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 a discharge upgrade or granting him 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.

#### 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 8 August 2003, correcting box 4b. to read "E-4" vice E-5.

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 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.

8/21/2024

