



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

█  
Docket No. 1539-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
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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 10 Jul 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 for an upgrade of his characterization of service to Honorable.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 9 September 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 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 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. During his enlistment processing, Petitioner was granted an enlistment waiver for marijuana use, traffic infractions, and minor possession of alcohol.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

- d. Petitioner enlisted in the Marine Corps and began a period of active duty on 29 May 1990.
- e. Petitioner participated in [REDACTED], and [REDACTED] during the period from December 1990 to May 1991.
- f. In December 1991, Petitioner received meritorious mass for his performance while serving as a member of Surveillance and Target Acquisitions (STA) Platoon.
- g. On 8 March 1992, Petitioner received nonjudicial punishment (NJP) for violating a lawful order, larceny, unlawfully breaking into another Marine's wall-locker.
- h. On 29 August 1992, Petitioner received a second NJP for the wrongful use of marijuana. Subsequently, a medical evaluation found he was not psychologically dependent on marijuana.
- e. On 31 August 1992, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. Petitioner was advised of and elected his procedural right to consult with military counsel and waived his right to present his case to an administrative discharge board (ADB).
- f. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge for drug abuse and, on 25 September 1992, Petitioner was so discharged.
- g. Petitioner contends the following injustices warranting relief:
  - (1) Due to his period of service and time spent in theater, he developed PTSD and other mental health concerns that went untreated by the Marine Corps;
  - (2) He would not have had to self-medicate if he had been treated;
  - (3) His untreated PTSD and general anxiety disorder were the root cause of his attempts to numb the horrors of combat;
  - (4) Charges of theft were related to his superior's prejudices;
  - (5) He was counselled and disciplined but not medically treated and needs help; and
  - (6) He cited references (b) through (e).
- n. For purposes of clemency and equity consideration, the Board noted Petitioner provided a statement on his behalf, copies of the Hagel, Carson, Kurta, and Wilkie Memos, and documents from the Department of Veterans Affairs (VA).

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

o. 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:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, clinicians from the VA and the civilian sector have diagnosed PTSD and substance use disorder attributed to combat exposure. While it is possible that pre-service substance use may have worsened following a combat deployment, it is difficult to attribute his misconduct solely to mental health symptoms, given pre-service substance use and his statement that charges of theft were related to his superior's prejudices. 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 post-service evidence from [the] VA and civilian clinicians of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition."

In response to the AO, the Petitioner submitted a rebuttal in response to the AO, reiterating that he suffers from PTSD due to the trauma and stressors of combat. After reviewing Petitioner's rebuttal evidence, the AO remained unchanged.

## CONCLUSION

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

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. However, because Petitioner based his claim for relief in whole or in part upon his PTSD and other mental health concerns, the Board reviewed his application in accordance with the guidance of references (b) through (e). Accordingly, the Board applied liberal consideration to Petitioner's claimed PTSD and other mental health concerns and the effect that it 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. In making this finding, the Board concurred with the AO that there is post-service evidence from the VA and civilian clinicians of a diagnosis of PTSD that may be attributed to Petitioner's military service. Therefore, the Board determined that the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN).

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 service member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record, even under the liberal consideration standards, and that a GEN discharge characterization, and no higher, was appropriate.

Further, the Board determined Petitioner's narrative reason for separation, separation authority, separation code, and reentry code remain appropriate in light of his misconduct and unsuitability for further military service. Ultimately, the Board concluded that 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 Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 25 September 1992, Petitioner's character of service was "General (Under Honorable Conditions)."

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.

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.

10/3/2024

