



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

██████████
Docket No. 1542-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 24 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 discharge be upgraded to "Honorable." Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 8 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered, enclosure (2), an advisory opinion (AO) furnished by qualified mental health provider, which was considered favorable to Petitioner's mental health contentions.

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 enlisted in the Navy and began a period of active duty on 7 September 1993.

c. Petitioner's service health records indicate that, in January 1994, he received a medical evaluation after seeking assistance from the Chaplain. He reported symptoms of being

increasingly stressed out aboard his ship, of not feeling comfortable with the Navy due to receiving verbal racial slurs from members of his division, of feeling concerned by thoughts of self-harm, and of a primary cause of concern that his fiancé had broken their engagement due to her discontent over his service-related separation from her. The medical record referenced an impression of immature traits and issues related to life circumstance problems.

d. Petitioner absented himself without authority on 18 January 1994 and remained in an unauthorized absence (UA) status until 2 May 1994. After his initial return, he was again absent from 15 May 1995 to 16 May 1995. Although the records relating to his request were not retained in his official military personnel file (OMPF), Petitioner was discharged under Other Than Honorable conditions, on 9 June 1994, by reason of separation in lieu of trial (SILT).

e. The Board previously considered Petitioner's application for relief on 29 January 2020. Petitioner contended that substantially similar mental health concerns had contributed to his misconduct but provided no medical documentation in support of his mental health contentions.

f. Petitioner again contends that his mental health issues and post-traumatic stress disorder (PTSD) contributed to his misconduct, although he asserts that he cannot receive compensation or benefits for his mental health issues due to his characterization of service. In support of his contentions, he provided his service health records, a psychological evaluation, and a 2022 disability rating decision from the Department of Veterans Affairs (VA) reflecting that he has a service connected disability due to PTSD and receives benefits for treatment purposes only.

g. Because Petitioner contends that a mental health condition affected the circumstance of the misconduct which resulted in his administrative discharge, the Board requested the AO for consideration. The AO stated in pertinent part:

During military service, the ship's MO did not determine that the Petitioner was suffering from a diagnosable mental health condition. Post-service, the VA has granted service connection for PTSD. His UA does appear to have begun after his visit to the MO. It is possible that his UA could be attributed to mental health concerns that he did not feel were adequately addressed by the MO.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of PTSD. There is post-service evidence from the Petitioner to attribute his misconduct to PTSD."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board noted Petitioner's UA misconduct and does not condone it; however, the Board concurred with the AO that there is post-service evidence from the Petitioner to attribute his misconduct to PTSD. The Board further noted that the UA itself was Petitioner's only misconduct during his relatively brief period of active service and that the mitigating effect of his mental health concerns sufficiently outweighed the severity of his absent to warrant at least

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partial relief. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) and change his narrative reason for separation, separation authority, and separation code to reflect a "Secretarial Authority" discharge.

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 member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health conditions, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, on 9 June 1994, his "General (Under Honorable Conditions)" discharge, was issued under the authority of "MILPERSMAN 3630900," for the narrative reason of "Secretarial Authority," with a separation code of "JFF."

That 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.

7/26/2024

