



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

██████████
Docket No. 2785-24

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 9 Aug 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 27 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, Petitioner did not do so.

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 22 October 1986.

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c. Petitioner was subject to nonjudicial punishment (NJP) on four occasions between March 1987 and May 1988 and three administrative counselings. His first NJP, on 30 March 1987, was for a violation of Article 138 of the Uniform Code of Military Justice (UCMJ) due to unlawfully striking another junior enlisted sailor in the face with his fist.

d. Petitioner's second NJP, on 15 April 1987, for violating Articles 121 and 107 by wrongfully appropriating another sailor's radio and making a false official statement, respectively.

e. On 5 August 1987, Petitioner was issued administrative counseling for disrespectful language toward a superior commissioned officer.

f. Petitioner's third NJP, on 21 September 1987, was for three specifications of violations under Article 86 for failure to go to his appointed place of duty at the prescribed time and two specifications under Article 91 for disobeying an order not to eat "because he had already missed his opportunity" and for disobeying a lawful order to turn in his liberty card. He was further counseled that he was being retained but that further misconduct could result in his administrative separation.

g. Petitioner's fourth and final NPJ, on 12 May 1988, was for an additional three specifications of violating Article 86 by absence from his appointed place of duty and two specifications under Article 92 for disobeying a lawful order not to lay in his rack with his dungarees and disobeying a lawful order not to eat, again due to the fact that he had already missed his opportunity.

h. Consequently, Petitioner was notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct and, after consulting legal counsel, elected to waive his right to a hearing before an administrative separation board. The recommendation for his separation under Other Than Honorable conditions identified additional offenses not addressed in his NJP proceedings, to include a violation of Article 92 by disobeying an order to man the supply office during lunch and Article 115 for avoiding service by feigning to go to dental.

i. Petitioner's discharge was approved, and he was so discharged on 15 June 1988.

j. Petitioner previously applied to the Naval Discharge Review Board (NDRB) contending that his creditable service was otherwise under honorable conditions and, when considered in conjunction with his post-service conduct, warranted an upgraded characterization. The NDRB reviewed his discharge on 11 April 2000 and disapproved his request.

k. Petitioner contends that he excelled at his job as a storekeeper but was then assigned to kitchen mess where he became involved in a water fight that resulted in the sailors being placed on restriction. He then transitioned to a fire team as a hose man and received high performance marks and a letter of accommodation [appreciation/commendation]. He denies violating Article 121 and denies receiving retention warnings or notice of corrective actions. While aboard the [REDACTED] he claims that he was targeted by white sailors who would walk

around with sheets over their heads, threatening to hang African Americans and cursing towards him or others like him. He describes that the vile and hateful things they said caused him to fear and mistrust his fellow sailors. He also states that there was a homosexual man aboard his ship who constantly sexually harassed him, wrote him letters, touched him, and physically invaded his personal space, causing him significant discomfort. He reported this behavior to his chain of command, which he claims to have laughed it off. He asserts that his physical altercation was due to him defending himself from this harassment. When his father passed away, he had a 3-day pass to attend services and requested more time, due to grieving, which he alleges was denied. After returning to the ship, he became depressed and suicidal, and went to the chaplain, his chain of command, and medical but states that they did nothing. His unauthorized absences and disrespect misconduct followed this event due to the mental health episode he experienced at that time. For purposes of clemency and equity consideration, Petitioner submitted a personal statement and two supporting statements from former shipmates who served with him, attesting to his experience of racism aboard his ship and to his altercation with a homosexual shipmate.

l. Because Petitioner contends that a mental health condition affected the circumstances of his discharge, the Board requested enclosure (2) for consideration. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct, nor did he submit any medical evidence in support of his claim.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

m. Petitioner submitted a rebuttal to enclosure (2); however, he did not provide any new medical information for consideration. Therefore, the AO remained unchanged.

CONCLUSION:

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

The Board noted Petitioner's misconduct and does not condone it. Additionally, the Board concurred with the opinion of the AO regarding the lack of objective evidence of any mental health diagnosis for a condition which might warrant liberal consideration in accordance with references (b) through (e). However, the Board noted that the period of Petitioner's service nearly 40 years ago pre-dated modern diversity policies. Additionally, notwithstanding the desegregation of naval vessels several decades prior to Petitioner's service, the Board observed that African American sailors, who were already a minority in the general fleet, historically had even less minority representation aboard certain classes of vessels, particularly nuclear powered ships, during the period of Petitioner's service. When considering Petitioner's personal

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statement, as supported by witnesses who served alongside him, in conjunction with certain aspects of Petitioner's disciplinary record, which included multiple punishments for eating after being ordered not to eat, the Board found sufficient evidence of a probable injustice to warrant partial relief purely as a matter of clemency. Specifically, the Board concluded it was in the interests 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. Similarly, 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), for the period ending 15 June 1988, indicating he was discharged with a "General (Under Honorable Conditions)" characterization, under the authority of "MILPERSMAN 3630900," with a narrative reason for separation of "Secretary Plenary Authority," and "JFF" separation code.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/28/2024

