



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

██████████
Docket No. 3490-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████, USN,
XXX-XX-██████████

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 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Advisory Opinion dated 6 August 2024

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 (2) through (4) apply.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 9 October 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, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered enclosure (4), an advisory opinion (AO) prepared by 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. After a period of Honorable service, Petitioner reenlisted in the Navy on 6 February 2006. On 25 April 2006, he received non-judicial punishment (NJP) for wrongful use and possession of methamphetamine and underage drinking.

d. Unfortunately, all the documents pertinent to Petitioner's separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 24 May 2006 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct (Drug Abuse)," his separation code is "HKK," and his reenlistment code is "RE-4."

e. Petitioner's previous period of continuous Honorable service from 17 September 2001 through 5 February 2006 is not documented on his DD Form 214.

f. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 4 February 2010, the NDRB denied his request after determining that his discharge was proper as issued.

g. Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service. As a result, enclosure (4) was requested from a mental health professional. The AO states in pertinent part:

That Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use 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. Temporally remote to his military service, he has been granted service connection for a mental health condition (psychosis/schizophrenia). Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition other than substance use disorder, given inconsistencies in his reported substance use in service and his current denial of intentional use. 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 concludes, "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 insufficient evidence to attribute his misconduct to a mental health condition, other than substance use disorder."

h. Petitioner contends he used methamphetamine to relieve his depression and he innocently ingested crystal methamphetamine due to being tricked. For purposes of clemency and equity consideration, the Board considered the evidence he provided in support of his application.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded Petitioner's request merits partial relief. As discussed, the Board noted that Petitioner's DD Form 214 does not document his previous period of continuous Honorable service and requires correction.

The Board was aware that the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

Regarding Petitioner's request to upgrade his 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 reference (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined Petitioner's misconduct, as evidenced by NJP, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact it involved a drug related 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 safety of their fellow service members. Further, the Board concurred with the AO that there is insufficient evidence Petitioner's misconduct could be attributed a mental health condition or PTSD. As explained in the AO, there is insufficient evidence to attribute his misconduct to a mental health condition other than substance use disorder, given inconsistencies in his reported substance use in service and his current denial of intentional use. Finally, the Board noted that there is no evidence in his record, and he submitted none, to substantiate his contention that he innocently ingested a controlled substance.

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 he provided 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 him the relief he requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence he provided was insufficient to outweigh the seriousness of his misconduct. Accordingly, given the totality of the circumstances, the Board determined that his request does not merit relief.

RECOMMENDATION:

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

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That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 24 May 2006, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 17SEP2001 TO 5FEBRUARY2006."

That no further changes be made to Petitioner's record.

That 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 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.

11/4/2024

