



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

██████████
Docket No. 3715-24

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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUUSD 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 13 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 his characterization of service be upgraded. Enclosures (1) through (3) 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 included references (b) through (e). Additionally, the Board considered enclosure (3), an Advisory Opinion (AO) furnished by a qualified mental health provider. Although Petitioner was provided an opportunity to comment on the AO, he chose not to 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.

b. Although the enclosure was not filed in a timely manner, the statute of limitation was waived in accordance with reference (d).

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c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 7 February 2005.

d. On 2 June 2006, Petitioner received non-judicial punishment (NJP), for unauthorized absence (UA), violation of a lawful order, and false official statement. Petitioner was issued a counseling warning for his performance and conduct and advised further deficiencies in performance or conduct will result in disciplinary action and or processing for administrative separation.

e. Unfortunately, documents pertinent to Petitioner's administrative 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 were separated from the Navy on 7 February 2008 with an General (Under Honorable Conditions) (GEN) characterization of service, his narrative reason for separation is "Convenience of the Government: Physical or Mental Conditions," his separation code is "KfV," and his reenlistment code is "RE-4."

f. Petitioner contends the correction should be made because his condition was not evaluated by a doctor of his choosing and, since his separation, he has received the proper medical care he needed to treat his PTSD. For purposes of clemency and equity consideration, the Board considered the evidence Petitioner provided in support of his application.

g. In light of the Petitioner's assertion of Mental Health Condition, the Board requested enclosure (3). The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His adjustment 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. He has received a diagnosis of another mental health condition from a civilian provider that is temporally remote to his service and appears unrelated. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, as his mental health symptoms onset after the judicial proceedings of the misconduct. 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 in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition."

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CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief. In keeping with the letter and spirit of references (b) through (e), the Board determined that it would be an injustice to label one's discharge as being for a diagnosed as physical or mental condition. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the below recommended correction action, the Board determined Petitioner's assigned characterization of service and reentry code remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (e). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service along with his contentions.

After thorough review, the Board concluded that Petitioner's potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making the finding, the Board determined that Petitioner's trait average was below what was required to be considered for an Honorable character of service. Furthermore, as explained in the AO, the Petitioner received a diagnosis of another mental health condition from a civilian provider that is temporally remote to his service and appears to be unrelated. Finally, the Board observed that Petitioner was properly assigned his reentry code based on the determination that he was unsuitable for further military service. The Board found this determination to be supported by Petitioner's diagnosis and his record of misconduct.

Therefore, even in light of references (b) through (e) and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting relief as a matter of clemency or equity.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 7 February 2008, reflecting that his narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

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.

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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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

10/30/2024

