



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

██████████
Docket No. 4060-24

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 w/ enclosures
(2) Advisory Opinion (AO) of 5 Sep 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 and that his rank and paygrade be changed to reflect his highest grade held of lance corporal/E-3. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████ ██████████, reviewed Petitioner's allegations of error and injustice on 21 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered enclosure (2), an 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, 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. Although Petitioner did not file his application in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

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b. Petitioner enlisted in the Navy with a pre-service history of marijuana use and a waiver for an adjudicated, serious non-traffic law violation, and began a period of active duty on 5 August 2002. During his initial entry physical, he denied pre-service receipt of counseling or mental health treatment.

c. On 4 March 2004, Petitioner was subject to nonjudicial punishment (NJP) for a violation of Article 112a of the Uniform Code of Military Justice due to use of the controlled substance, marijuana. He was punished with 45 days of restriction and extra duty, two months forfeiture of \$668 pay per month, and reduction to the paygrade of E-2.

d. Although the documents were not retained in his official military personnel file (OMPF), Petitioner was notified of processing for administrative separation by reason of misconduct due to drug abuse and elected to waive his right to a hearing before an administrative separation board. On 5 April 2004, following legal review by a staff judge advocate, the recommendation for his separation under Other Than Honorable conditions was approved for the reason of misconduct due to drug abuse. He was so discharged on 6 April 2004.

e. Petitioner previously applied to the Naval Discharge Review Board contending that his misconduct was an isolated incident and that his record of service otherwise warranted an upgrade. The NDRB considered his request on 12 February 2009 but found that his discharge was proper as issued. He subsequently applied to this Board, again contending that his discharge was too severe for his sole infraction of marijuana use. The Board considered his request on 2 June 2016 and denied relief.

f. Seeking reconsideration under references (b) through (e), Petitioner contends that his discharge for marijuana use was unjust because he was suffering from Bipolar Disorder (BPD) during his military service. After consulting with his current mental health provider, he believes that he was improperly medicated during his military service with Concerta, Celexa, and Trazadone for his then-presumed diagnosis of attention-deficit hyperactivity disorder (ADHD) rather than his BPD. His understanding is that the effect of this combination of stimulants and anti-depressants resulted in mania and caused an unstable mental condition, which led to his poor judgment and misconduct. He asserts that his marijuana use during his service was an isolated incident which resulted from an attempt to self-medicate to help feel normal, but that his post-discharge diagnosis and treatment has helped him stabilize his condition to rebuild his life. He claims to now work in support of homeless organizations to contribute to the well-being of others with mental health conditions like his.

g. For purposes of clemency and equity consideration, Petitioner submitted a personal statement, his disability rating from the Department of Veterans Affairs, a mental health consultation an accompanying statement from his treating doctor, his social security disability determination, a confirmation letter that he is a ward of the state, a criminal history background check, various letters of recommendation for employment, a letter regarding his volunteer services, academic and training certifications, and evidence of his participation in the [REDACTED]
[REDACTED]

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h. Because Petitioner contends that a mental health condition affected the circumstances of the misconduct which resulted in his discharge, the Board considered the AO. The AO state in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His mental health diagnoses of a chronic depressive disorder and ADHD were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician.

Post-service, the Petitioner's diagnoses have been revised to Bipolar Disorder, following the passage of time and increased information. It is of note that Bipolar Disorder was considered as a possible diagnosis during military service but not assigned due to insufficient evidence. The diagnosis was listed to be ruled out following additional information gained over time.

Unfortunately, there are inconsistencies in the Petitioner's record that make it difficult to attribute purported one-time marijuana use solely to undiagnosed symptoms of a manic episode. The Petitioner reported pre-service marijuana use during his enlistment process but denied a history of mental health symptoms or hospitalization. It is possible that the Petitioner's in-service marijuana use was a continuation of pre-service behavior. 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 a civilian provider of a mental health condition that may be attributed to military service. There is no evidence of a diagnosis of PTSD. There is insufficient evidence attribute his misconduct solely to a mental health condition."

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 drug abuse misconduct and does not condone it. Additionally, the Board concurred with the AO regarding factors of record that render it difficult to attribute his purported one-time marijuana use solely to undiagnosed symptoms of a manic episode given, for example, his pre-service history of marijuana use. However, the Board observed that Petitioner experienced a significant mental health condition during his military service which he continues to live with and which he appears to have successfully managed over the years following his discharge, to include not only maintaining employment and proper mental health care but participating in volunteer efforts to assist those who face similar mental health struggles. The Board found that the favorable factors Petitioner submitted for consideration of clemency based on his post-service character and otherwise honorable active duty service with the

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exception of a single marijuana use offense sufficiently outweighed that misconduct which resulted in his discharge. Accordingly, the Board determined that it is in the interest of justice, purely as a matter of clemency, to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) and change his reason for separation 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, with respect to Petitioner's request to change his final rank and paygrade to the highest grade held, the Board found no evidence of error or injustice in his NJP punishment for his drug abuse misconduct. While the Board carefully considered the evidence Petitioner submitted 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 Petitioner the additional relief he requested or granting the additional relief as a matter of clemency or equity. Ultimately, the Board concluded that 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, for the period ending on 6 April 2004, he was discharged with a "General (Under Honorable Conditions)" characterization of service, under the authority of "MILPERSMAN 1900-164," with a narrative reason for separation of "Secretarial Authority," a separation code of "JFF," and an "RE-1J" reentry 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.

11/14/2024

