



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

Docket No. 4654-24

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF

[REDACTED], USN,

Ref: (a) 10 U.S.C. § 1552

(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)

(c) USD Memo of 25 August 2017 (Kurta Memo)

(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments

## (2) Case summary

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 naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 25 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 (d). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and Petitioner's AO rebuttal submission.

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.

c. The Petitioner originally enlisted in the U.S. Navy and began a period of active service on 9 April 1996. Petitioner's pre-enlistment physical examination, on 9 January 1996, and self-

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[REDACTED], USN, [REDACTED]

reported medical history both noted no psychiatric or neurologic conditions of symptoms. Petitioner required an enlistment waiver for both his pre-service marijuana use, and for a non-minor misdemeanor. After a period of continuous Honorable service, Petitioner reenlisted on 18 January 2000.

d. On 8 May 2000, Petitioner received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). Petitioner did not appeal his NJP.

e. On 14 May 2001 Petitioner reported for duty with [REDACTED].

f. On 15 August 2001, a Navy Drug Screening Laboratory message indicated that Petitioner tested positive for marijuana well above the DoD testing cut-off level.<sup>1</sup> On 31 August 2001, Petitioner received a second NJP for the wrongful use of marijuana. Petitioner did not appeal his NJP.

g. Consequently, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to drug abuse. On the same day, Petitioner waived his rights in writing to consult with counsel, to include written rebuttal statements, and to request an administrative separation board. Ultimately, on 3 October 2001 Petitioner was discharged from the Navy for misconduct with an Other Than Honorable conditions (OTH) characterization of service and was assigned an RE-4 reentry code. He was issued a DD Form 214 that did not reflect his period of Honorable service from 9 April 1996 to 17 January 2000.

h. In short, Petitioner contended he incurred PTSD as a result of a surgical error on his neck while on active duty. He further contended, in part: (1) being operated on without anesthesia, at the very hospital at which Petitioner worked, took its toll on him, (2) even today, Petitioner still suffers from insomnia, intrusive thoughts, and other PTSD symptoms, (3) it was unfortunate Petitioner served during a time when the recognition and understanding of PTSD and its effects were severely lacking, (4) had Petitioner's PTSD been diagnosed during his service, it is likely that his discharge would have turned out differently, and more importantly, Petitioner would have received the help he needed sooner, (5) Petitioner's discharge-related misconduct must be viewed in the context of his then-undiagnosed PTSD, (6) the severity of Petitioner's misconduct was relatively minor, and while he did fail two drug tests for marijuana use, no critical missions were affected and no one was hurt due to his misconduct, (7) Petitioner did not have a pattern of marijuana use before his surgery, (8) post-service the Department of Veterans Affairs (VA) has diagnosed Petitioner with PTSD, and (9) Petitioner strongly regrets using marijuana and, notwithstanding that he only did it to cope with the effects of the trauma he endured, Petitioner accepts responsibility for his actions. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

i. A licensed clinical psychologist (Ph.D.) reviewed Petitioner's contentions and the available records, and issued an AO dated 9 September 2024. As part of the Board's review, the Board considered the AO. The AO stated, in pertinent part:

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<sup>1</sup> The Petitioner tested positive for the marijuana metabolite at a level of 360 ng/ml. The established DoD administrative testing cut-off level for marijuana is 15 ng/ml.

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Petitioner contended he incurred PTSD from a surgical error, which was exacerbated by trauma witnessed in the course of his work in the Pediatric Intensive Care Unit (PICU). He contended that he began to abuse prescription pain medication following the surgery, which worsened symptoms of depression and contributed to alcohol use disorder and one-time marijuana use.

There is no evidence that he was diagnosed with PTSD or another mental health condition in military service. Upon repeated evaluation in service, he denied mental health symptoms.

Temporally remote to his military service, he has received treatment for PTSD and other mental health concerns, including polysubstance use.

Unfortunately, there are inconsistencies between the Petitioner's report during military service and his report to post-service providers that raise questions regarding the reliability of his recall over time or the candor of his report. In this petition, he reported he incurred PTSD from the error during his neck surgery, which was exacerbated by exposure to traumatic events in the PICU. However, to his VA clinician, the Petitioner explained that he incurred PTSD from childhood sexual abuse that was exacerbated by the medical error.

Although marijuana use could be considered a behavioral indicator of self-medication of PTSD symptoms, it is difficult to make this attribution given inconsistencies in the record and the Petitioner's pre-service marijuana use that appears to have continued in service.

The Ph.D.'s AO concluded, "it is my clinical opinion there is post-service evidence from the VA of diagnoses of PTSD and other mental health concerns that may be attributed to military service in part. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition related to military service."

Following a review of Petitioner's AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request merits partial relief. Specifically, the Board noted that the misconduct forming the basis of Petitioner's OTH discharge technically occurred during his second enlistment period. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his previous enlistment was completed without any significant adverse disciplinary action. The Board was aware that the Department of 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

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upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

Notwithstanding the recommended corrective action below, the Board determined no further relief was warranted. After thorough review, the Board concluded that Petitioner's potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and Petitioner's misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that Petitioner's misconduct was intentional and willful, and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

The Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

The Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that his misconduct and disregard for good order in discipline clearly merited his discharge. 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 relief he requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to

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outweigh the seriousness of his misconduct. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of material errors warranting the following corrective action.

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 3 October 2001, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 09APR1996 TO 17JAN2000."

Following the correction(s) to the DD-214 for the period ending 3 October 2001, that all other information currently listed on such DD-214 remain the same.

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.

11/8/2024

