



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

██████████
Docket No. 5918-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo, 24 Feb 16 (Carson Memo)
(d) USD Memo, 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo, 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 27 September 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his discharge characterization of service be upgraded. Enclosures (2) through (4) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 11 December 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) from a qualified mental health professional. 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 enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

Subj: REVIEW NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

c. Petitioner entered active duty with the Navy on 8 July 2004. He admitted to pre-service marijuana use prior to enlistment. On 13 January 2005, he received non-judicial punishment (NJP) for wrongful use of marijuana. Consequently, he was notified of pending administrative separation action by reason of misconduct due to drug abuse. After electing to waive his rights, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and Petitioner was so discharged on 25 February 2005.

d. In his application, Petitioner asserts that he incurred mental health concerns during military service due to undiagnosed Schizophrenia and the undiagnosed mental health condition (Schizophrenia) contributed to his misconduct.

e. Based on Petitioner's assertion of a PTSD/mental health condition, enclosure (4) was requested and reviewed. It stated in pertinent part:

There is no evidence that Petitioner was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, he has received treatment for a mental health concern that may have been undiagnosed in service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his pre-service history of substance use that appears to have continued in service. 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 that there is post-service evidence from a civilian provider of a mental health condition that may have been present in military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief.

In keeping with the letter and spirit of the Wilkie Memo, the Board determined that it would be an injustice to continue to characterize Petitioner characterization of service as OTH. Although the Board concurred with the AO and found insufficient evidence to attribute his misconduct to a mental health condition, the Board determined, purely as a matter of clemency and equity, that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions and re-characterization to a General (Under Honorable Conditions) (GEN) is now more appropriate. While the Board did not condone Petitioner's misconduct and found no error with his NJP or administrative separation, the Board considered that Petitioner was only a few weeks past qualifying for an entry level separation and determined his assigned OTH was overly harsh. Based on the same rationale, the Board determined it was also in the interests of justice to change Petitioner's Narrative Reason for Separation to Secretarial Authority with associated changes to his SPD code, Separation Authority, and reentry code.

Subj: REVIEW NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

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 GEN discharge characterization and no higher was appropriate. Ultimately, the Board determined 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), for the period ending 25 February 2005, indicating his characterization of service was "General (Under Honorable Conditions)," with a Narrative Reason for Separation of "Secretarial Authority," SPD code of "JFF," separation authority of "MILPERSMAN 1910-164," and reentry code of "RE-1J.

That no further changes be made to the 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 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 reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

1/8/2025

