



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

[REDACTED]  
Docket No. 6339-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,  
[REDACTED]

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), Petitioner filed enclosure (1) with the Board for Corrections 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 8 November 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. Although Petitioner was provided an opportunity to respond to 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.

c. The Petitioner originally enlisted in the U.S. Navy and began a period of active service on 21 June 1979. On 17 December 1982, Petitioner's command placed a "Page 13" counseling entry (Page 13) in his service record documenting his drug abuse. The Page 13 stated, in part:

I have been counseled concerning my confirmed drug involvement. I have been evaluated by CAAC as a poly-drug abuser. I have been scheduled to receive treatment at

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Naval Drug Rehabilitation Center, [REDACTED]...I understand that further drug abuse qualifies me for discharge from the Naval Service.”

d. At the expiration of Petitioner’s first enlistment on 5 July 1985, he received an Honorable discharge. However, his command assigned him an RE-4 reentry code due to his failure to extend his enlistment in accordance with “C” school enlistment requirements.

e. On 24 March 1986, Petitioner received an enlistment waiver for his RE-4 reentry code and reenlisted in the U.S. Navy.

f. On 4 November 1986, Petitioner commenced a period of unauthorized absence (UA) that terminated after eight (8) days. Per Petitioner’s counsel, the Petitioner took the “unauthorized absence of nine days to deal with a challenge in his personal life.” Upon his return from the UA, Petitioner tested positive for marijuana.

g. On 21 November 1986, Petitioner was standing on the balcony of the second story apartment in which he was living and leaned against its railing. The defective railing broke and gave way, causing Petitioner to fall off the balcony and strike his head on the concrete ground below. Petitioner suffered abrasions, lacerations, and lost consciousness.

h. On 24 November 1986, a Navy Drug Screening Laboratory (NDSL) message indicated that Petitioner again tested positive for marijuana. On the same day, Petitioner commenced another UA. The UA terminated after two (2) days on 26 November 1986.

i. On 12 December 1986, Petitioner commenced yet another UA. Petitioner’s command declared him to be a deserter. The UA terminated on 14 March 1987. Upon his return from the UA, Petitioner tested positive for marijuana.

j. On 20 March 1987, an NDSL message indicated that Petitioner tested positive again for marijuana. On 15 May 1987, Petitioner was convicted at a Special Court-Martial (SPCM) for: (a) for this three separate UA offenses totaling 102 days, and (b) the wrongful use of a controlled substance (marijuana). Petitioner was sentenced to confinement for ninety (90) days, forfeitures of pay, and a reduction in rank to E-3.

k. On 21 May 1987, Petitioner’s command notified him of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, and misconduct due to drug abuse. Petitioner consulted with counsel and waived his right (in writing) to request an administrative separation board. Petitioner was advised in writing that if he were to commence another UA, the administrative separation processing would proceed in his absence.

l. On 4 June 1987 Petitioner’s commanding officer (CO) recommended to the Separation Authority (SA) that Petitioner receive an under other than honorable conditions (OTH) characterization of service. In his recommendation, the Petitioner’s CO stated, in part:

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[REDACTED]

Since arriving at this command on 17 Oct 88, he has been UA on three separate occasions, once for over 90 days. He has demonstrated a total disregard for the Navy's drug policy by using marijuana on at least two occasions. During the time he has been back in the Navy he has exhibited a complete lack of desire or potential to be a reliable, productive Sailor. He displays no sense of proper military conduct or responsibility. His behavior is inconsistent. He blames his own actions on others. In his most recent eval, he was not recommended for advancement or retention. His continued service in the Navy would be extremely detrimental to moral and contrary to the good order and discipline which are absolutely essential in the armed forces.

m. In the interim and without any legal justification or excuse, on 11 June 1987, Petitioner commenced another UA. Petitioner's command declared him to be a deserter on or about 28 July 1987. Petitioner's UA terminated on 10 September 1987. On 13 September 1987, Petitioner commenced another UA and never returned to military control prior to his final separation.<sup>1</sup>

n. On 9 October 1987 the SA approved and directed Petitioner's discharge in absentia for misconduct due to drug abuse and under other than honorable conditions (OTH) discharge characterization. Ultimately, on 19 October 1987 Petitioner was discharged from the Navy for misconduct with an OTH characterization of service and was assigned an RE-4 reentry code.

o. A licensed clinical psychologist (Ph.D.) reviewed Petitioner's contentions and the available records, and issued an AO dated 3 October 2024. As part of the Board's review, the Board considered the AO. The AO stated, in pertinent part:

During military service, Petitioner received medical treatment for a head injury. He submitted post-service evidence of on-going symptoms consistent with TBI. It is plausible that his head injury contributed to his poor motivation to continue service and his UA from his place of duty. However, it is difficult to attribute his misconduct solely to personality and other changes following TBI, given his history of UA and substance use prior to the head injury.

The Ph.D.'s AO concluded, "it is my clinical opinion that there is in-service evidence of a head injury that may have contributed to TBI. There is insufficient evidence to attribute his misconduct solely to TBI."

p. Petitioner requested liberal consideration and clemency in the form of a discharge upgrade. In short, Petitioner contended he was suffering from a traumatic brain injury (TBI) that altered his judgment and reasoning. Petitioner requested that the Board grant liberal consideration that his TBI-related mental health considerations mitigated the behavior leading to his discharge, and were not outweighed by the seriousness of his cumulative misconduct.

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<sup>1</sup> Petitioner's UA effectively terminated for administrative purposes on his discharge date of 19 October 1987, a period of thirty-six (36) additional days in a UA status.

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## CONCLUSION:

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

The Board initially determined that Petitioner's administrative separation for misconduct was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the Petitioner's repeated, persistent, and willful polysubstance drug-related misconduct and his multiple UAs, the Board felt that Petitioner's TBI and resulting symptoms mitigated some of the misconduct used to characterize his discharge. The Board concluded that the Petitioner's mental health-related conditions and/or symptoms as possible causative factors in the misconduct contributing to his discharge and characterization were not outweighed by the severity of Petitioner's misconduct. With that being determined, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been with an OTH, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) and no higher, based on liberal consideration of mental health considerations is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an honorable discharge characterization. The Board did not believe that the Petitioner's record was otherwise so meritorious to deserve an Honorable discharge. The Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standard for mental health conditions. The Board believed that, even though flawless service is not required for an honorable discharge, in this case a GEN discharge and no higher was appropriate. The Board determined the record reflected that Petitioner's misconduct was intentional and demonstrated he was unfit for further service. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of extraordinary clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

Lastly, the Board did not find a material error or injustice with the Petitioner's original RE-4 reenlistment/reentry code, narrative reason for separation, separation authority, and separation code. The Board concluded the Petitioner was assigned the correct reentry code, narrative reason for separation, separation authority, and separation code based on the totality of his circumstances, and that such entries on Petitioner's DD Form 214 were entirely proper and in compliance with all Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, for the period ending 19 October 1987, indicating his character of service was "General (Under Honorable Conditions)."

Following the correction to the DD Form 214 for the period ending 19 October 1987, that all other information currently listed on such DD Form 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.

2/4/2025

