



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

██████████  
Docket No. 6506-24

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, ██████████

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 9 Oct 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. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 25 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, applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board considered the 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 and began a period of active duty on 25 October 2004. He had an end of obligated active service date of 24 October 2010 based on an agreement to extend his enlistment for his service school.

c. Petitioner served as a corpsman, to include three years and six months as a field medical service technician with deployments in support of combat operations. During this period, he earned the Good Conduct Medal, the Navy and Marine Corps Achievement Medal (NAM), and the Joint Service Achievement Medal (JSAM). His NAM specifically documented that, while responding to an explosion from an improvised explosive device, without regard for his own safety, he triaged, treated, and transported several injured patients while under small arms fire. His performance evaluation reflects that he routinely took on additional duties above and beyond that of his occupational duty assignment.

d. On 20 January 2009, Petitioner had a positive urinalysis screening for cocaine metabolites. As a result, he was subject to nonjudicial punishment (NJP) for violating Article 112a of the Uniform Code of Military Justice (UCMJ) by wrongful use of a controlled substance. He was reduced to the paygrade of E-3, required to forfeit \$929 pay per month for two months, and placed on restriction with extra duty for 45 days. He was also notified of processing for administrative separation by reason of misconduct due to drug abuse, and he elected to waive his right to consult legal counsel or to a hearing before an administrative separation board.

e. On 11 February 2009, administrative remarks documented that Petitioner declined drug rehabilitation treatment.

f. On 17 March 2009, Commander, [REDACTED] authorized Petitioner's administrative separation under Other Than Honorable conditions and he was so discharged on 27 March 2009.

g. Petitioner previously applied to the Naval Discharge Review Board (NDRB) on three separate occasions. In its second review of Petitioner's record on 20 November 2020, the NDRB granted a characterization upgrade to General (Under Honorable Conditions). The NDRB conducted a third review of Petitioner's discharge on 25 July 2023, pursuant to the Settlement Agreement in *Manker v. Del Toro*. The NDRB found that the circumstances met the criteria under the policy memos, to include a mitigating nexus between his drug abuse misconduct and mental health condition; however, the final decision upheld the previous determination with respect to Petitioner's characterization on the basis that his service was honest and faithful but had significant negative aspects of conduct or performance of duty which outweighed positive aspects<sup>1</sup>.

h. Petitioner contends that his discharge was an injustice because his mental health condition was a contributing factor to his single in-service incident of drug use and because his conduct was otherwise exemplary both during his service and after his discharge. He believes he

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<sup>1</sup> Despite the NDRB's decision to affirm its previous decision regarding Petitioner's characterization of service, it granted partial relief by changing his reason for separation to reflect a Secretarial Authority discharge. However, the Board did not find a corrected DD Form 214 in Petitioner's record reflecting the latest NDRB decision.

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deserves an Honorable characterization under the application of liberal consideration. For the purpose of clemency and equity consideration, Petitioner provided extensive supporting evidence of his mental health conditions, and evidence of his post-service character and accomplishments to include letters of appreciation and customer recognitions and five letters of support.

i. Because Petitioner contends that a mental health condition contributed to the misconduct which resulted in his discharge, the Board requested the AO at enclosure (2) for consideration. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His in-service diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. Post-service, the VA has granted service connection for PTSD. It is plausible that the Petitioner's motivation for service may have declined following his return from combat deployment and in the context of symptoms of PTSD. Reduced motivation may have contributed to his misconduct and his expressed desire for separation. It is difficult to attribute his misconduct solely to symptoms of PTSD. Discrepancies between his in-service explanations for substance use and post service statements raise questions regarding the reliability of his recall. More weight has been given to his in-service explanations for his substance use over post-service recollections.

The AO concluded, "it is my clinical opinion that there is in-service and post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or a mental health condition.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board initially determined that Petitioner's original administrative separation with an OTH characterization was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge. Additionally, the Board noted Petitioner's misconduct and does not condone it. Likewise, the Board concurred with the AO that there is insufficient evidence to attribute Petitioner's in-service cocaine use solely to his contended mental health condition given the explanations he provided for his substance use during military service. However, the Board observed that Petitioner did, in fact, incur PTSD during his military service stemming from his two combat deployments as a field corpsman in support of combat operations; which continues to adversely impact his post-service mental health. Further, the Board found that Petitioner's performance and conduct prior to the single instance of substance abuse, which resulted in his discharge, was clearly above that expected of a service member of his grade and rank, as evidenced by the personal awards he earned in recognition of his performance while deployed. Upon consideration of factors in support of a potential grant on the basis of clemency, in addition to the application of liberal consideration to

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Petitioner's PTSD condition, the Board determined that the totality of favorable factors sufficiently outweighed the severity of the single instance of drug abuse misconduct to warrant further relief in the form of an upgrade to a fully Honorable characterization of service. Therefore, in keeping with the letter and spirit of references (b) through (d), while not necessarily excusing or condoning the Petitioner's serious drug-related misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under honorable conditions, and that a discharge upgrade to "Honorable," strictly on extraordinary clemency and leniency grounds, is appropriate at this time.

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 27 March 2009, he was discharged with an "Honorable" characterization of service.

Commander, Navy Personnel Command shall ensure the 25 July 2023 NDRB decision to change Petitioner's separation to reflect a "Secretarial Authority" discharge is incorporated into the new DD Form 214.

That Petitioner be issued an Honorable discharge certificate.

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 corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

12/19/2024

