



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

██████████
Docket No. 6625-24

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 13 September 2014 (Hagel Memo)
(c) USD Memo of 25 August 2017 (Kurta Memo)
(d) USECDEF Memo of 25 July 2018 (Wilkie Memo)
(e) 10 U.S.C. 654 (Repeal)
(f) UNSECDEF Memo of 20 September 2011 (Correction of Military Record following Repeal of 10 U.S.C. 654)

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 to reflect current .

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 10 January 2025 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 (f). 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.

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c. The Petitioner originally enlisted in the U.S. Navy and began an initial period of active service on 28 July 1998. Petitioner's pre-enlistment physical examination, on 10 September 1996, and self-reported medical history both noted no psychiatric or neurologic conditions of symptoms. Petitioner last reenlisted, on or about 24 June 2008, while in the rating/rank of Hospital Corpsman Chief Petty Officer (E-7).

d. On 9 July 2010, pursuant to his guilty pleas, Petitioner was convicted at a General Court-Martial (GCM) of: (1) four (4) separate specifications of violating a lawful general order/regulation when he fraternized with junior enlisted personal in an unduly familiar manner, (2) violating a lawful general order by providing alcohol to an underage junior enlisted Marine, (3) assault consummated by a battery upon a junior enlisted male Marine, (4) wrongful sexual contact with a junior enlisted male Marine, and (5) two (2) separate specifications of sodomy upon a junior enlisted male Marine by force and without consent. You were sentenced to confinement for twelve (12) years, total forfeitures of pay and allowances, a reduction in rank to the lowest enlisted paygrade (E-1), and to be separated with a Dishonorable Discharge (DD).

e. Per the terms of Petitioner's pretrial agreement, on 15 October 2010, the Convening Authority (CA) approved the GCM sentence as adjudged; except the CA suspended any confinement in excess of thirty (30) months for a period of one (1) year. On or about 11 May 2011, the Naval Clemency and Parole Board disapproved Petitioner's request for parole. Upon the completion of GCM appellate review in Petitioner's case, on 9 December 2011, he was discharged from the Navy with a DD and assigned an RE-4 reentry code. The Board noted on Petitioner's DD Form 214 that the narrative reason for separation listed was, "Court Martial (Homosexual Conduct)," and his separation code was "JJB," which corresponded to "court martial (homosexual conduct)."

f. In short, Petitioner contended as a result of his deployments, he suffered from PTSD, traumatic brain injury (TBI), depression, and other conditions which have greatly affected him. He further contended, in part: (1) he is currently rated by the VA with a 100% disability rating, (2) he has accepted responsibility for his actions, (3) he is extremely remorseful for his actions and the pain he caused others, (4) his past actions are not indicative of his true character, (5) to please consider his post-service conduct and performance, which is a true reflection of his character, and (6) to please consider the fact that his mental health conditions significantly contributed to his admitted misconduct. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

g. A licensed clinical psychologist (Ph.D.) reviewed Petitioner's contentions and the available records, and issued an AO dated 11 October 2024. As part of the Board's review, the Board considered the AO. The AO stated, in pertinent part:

In March 2008, he was diagnosed with Anxiety Disorder Not Otherwise Specified (NOS) and Psychophysiological Insomnia related to on-going sleep difficulties by a military psychiatrist. Additional information was needed to R/O the possible presence of PTSD.

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In August 2008, he received another psychiatric evaluation. He was diagnosed with Adjustment Disorder with Anxiety. It was noted that he “does not meet full criteria for a diagnosis of PTSD. Symptoms are consistent with an adjustment disorder with anxiety in response to significant legal and personal stressors. Once legal stressors have resolved, further evaluation is recommended to R/O possible underlying PTSD.”

His diagnosis remained unchanged at follow-up appointments between September 2009 and March 2010. In May 2010, his diagnosis was revised to Anxiety Disorder NOS.

He has been granted service connection for PTSD with Major Depressive Disorder (MDD) and TBI, effective December 2011.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. He received mental health diagnoses that 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. He has received service connection for TBI and PTSD. It is plausible that his mental health symptoms identified in service have been re-conceptualized as PTSD and TBI with the passage of time and increased understanding. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. Although his post-service provider has expressed the opinion that his PTSD/TBI symptoms contributed to his court martial offenses, it is difficult to consider how fraternization and sexual assault could be attributed to combat stress. More weight has been placed on the nature of Petitioner’s misconduct over the opinion of his post-service provider.

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

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 warrants partial relief. Specifically, the Board noted that the misconduct forming the basis of Petitioner’s DD discharge involved multiple instances of varying misconduct, and not just homosexual-related acts. Thus, the Board concluded that certain administrative changes to Petitioner’s DD Form 214 should be made to the narrative reason for separation and separation code to reflect that his court-martial was for “misconduct (other),” and not solely for Petitioner’s forcible homosexual acts. Additionally, the Board noted that

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Petitioner's active duty start date may be erroneous and requires review by Commander, Navy Personnel Command.

Notwithstanding the recommended corrective action below, the Board determined no additional relief was merited. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (f). These included, but were not limited to, his desire for a discharge upgrade and his previously discussed contentions.

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. Moreover, the Board concluded that Petitioner's very serious GCM fraternization and sexual assault-related offenses forming the underlying basis of his DD were not the type of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. 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 also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite Petitioner's contentions this was not a case warranting any clemency as he was properly convicted at a GCM of serious misconduct involving unduly familiar relationships resulting in prejudice to good order and discipline. The Board determined that characterization with a DD or Bad Conduct Discharge (BCD) is appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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Finally, the Board determined Petitioner is not entitled to relief under reference (f) since his discharge was not based solely on his homosexual conduct and his record contained extensive aggravating factors.

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 references (b) through (f) 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 the requested relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214, for the period ending 9 December 2011, indicating his narrative reason for separation was "Court-Martial" with a separation code of "JJD."

That Commander, Navy Personnel Command (CNPC) review Petitioner's OMPF to determine whether the date in block 12a of his DD Form 214 is correct based on his original enlistment date of 28 July 1998. If block 12a requires any corrections, CNPC is further directed to make any necessary corrections/changes to blocks 12b through 12h on such DD Form 214, based on the change(s) to block 12a.

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.

1/20/2025

[REDACTED]
Executive Director

Signed by: [REDACTED]