



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

██████████
Docket No. 6925-24

Ref: Signature Date

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

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

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 27 Jul 23

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 13 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, 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, Petitioner 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 21 August 1986.

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c. On 28 August 1987, Petitioner was subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Articles 92, 89, and 128, respectively, for failure to obey a lawful order, disrespect toward a superior commissioned officer, and assault. As a result, he was reduced in paygrade, punished with three days of confinement to bread and water, and issued administrative counseling advising him that further misconduct could result in administrative separation.

d. On 23 October 1987, Petitioner received a second NJP for a violation of the UCMJ under Article 108 due to damage, destruction, or loss of military property of an unspecified nature. He was placed on restriction with extra duties for a period of 5 days, required to forfeit \$369 pay, and issued a second administrative counseling warning.

e. On 21 September 1988, Petitioner received his third NJP for multiple additional violations of the UCMJ, to include Article 92, for failure to obey a lawful order, Article 91, for contempt or disrespect toward a warrant, noncommissioned, or petty officer, and, Article 90, for willful disobedience of a superior commissioned officer. The NJP again resulted in his reduction in paygrade in addition to a 30-day period of restriction with extra punitive duties.

f. In November 1989, Petitioner was hospitalized for homicidal ideations. During his hospitalization, he was diagnosed with a paranoid Personality Disorder (PD) with schizotypal features and antisocial features, existing prior to his initial entry onto active duty, and for alcohol dependence.

g. Consequently, Petitioner was processed for administrative separation via notification procedures for the sole reason of convenience of the government due to his diagnosed PD, with a recommendation that he receive a General (Under Honorable Conditions) (GEN) discharge. He elected not to submit a statement.

h. On 14 November 1989, Petitioner was discharged with a GEN characterization of service, consistent with type warranted by service, based upon his conduct trait average falling substantially below the established conduct trait average of 3.0 otherwise required for an Honorable characterization of service.

i. The report of Petitioner's separation, submitted to Commander, Naval Personnel Command, noted that he had been subject to NJP on three occasions since reporting to his command, demonstrated an inability to adhere to Navy standards, and had a general disregard for basic standards of military behavior and discipline.

j. Petitioner contends that he developed a major depressive disorder with symptoms of anxious distress. Although he acknowledges that he was diagnosed with PD during his military service, which resulted in his discharge, he believes that any problems with his performance of duty were a direct result of his service connected disabilities from his mental health diagnoses. In support of his request and for clemency and equity consideration, he submitted records of his rating decision and benefits letters from the Department of Veterans Affairs (VA).

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k. Because Petitioner contends that a mental health condition affected 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 during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Temporally remote to his military service, he has been granted service connection for another mental health condition. While it is possible that symptoms identified as personality disorder in service may have been re-characterized as another mental health condition with the passage of time and increased understanding, there is insufficient information regarding his post-service diagnosis to conclude there was an error in his in-service diagnosis. More weight has been placed on in-service records, as his in-service misconduct appears to be consistent with his diagnosed personality disorder. 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 the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than his diagnosed personality disorder."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior and/or adjustment disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

With respect to Petitioner's characterization of service, the Board determined it remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the references (b) through (e). These included, but were not limited to, Petitioner's desire for a discharge upgrade and his previously discussed contentions.

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After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that Petitioner's misconduct appears attributable to the characterological features of his PD. As explained in the AO, weight has been placed on in-service records, as his in-service misconduct appears to be consistent with his diagnosed PD. Further, the Board considered that the marks issued incident to Petitioner's NJPs did not meet the minimum standard established for an Honorable discharge. The Board further noted that basis for which Petitioner was separated mandates that he shall be issued a discharge characterization consistent with type warranted by service. Finally, the Board determined Petitioner already received a large measure of clemency when the Navy chose not to include his misconduct as an additional basis for administrative separation. Finally, the Board 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, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

As a result, the Board concluded significant negative aspects of Petitioner's service outweighed the positive aspects and continues to warrant a GEN characterization. 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 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.

Finally, the Board determined that Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. 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 14 November 1989, indicating he was discharged under the authority of "MILPERSMAN 3630900," with a narrative reason for separation of "Secretary Plenary Authority," and a "JFF" separation code.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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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.

1/12/2025

