



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

[REDACTED]
Docket No. 7245-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[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 to Honorable 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 17 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 (d). 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.

c. Petitioner enlisted in the U.S. Navy and began a period of active service on 11 February 2008. Petitioner's pre-enlistment physical examination, on 23 September 2006, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 10 July 2008, Petitioner reported for duty with [REDACTED] in [REDACTED].

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[REDACTED] USN [REDACTED]

d. On or about 8 August 2008, Petitioner took approximately fifteen cough and cold medicine pills. Petitioner stated he was feeling "...really overwhelmed with everything going on around me. With my family issues at home, my financial debt. And not liking work and the people I work with." While under the influence of the medication, Petitioner urinated off of the BEQ balcony and the urine ended up running down onto another Sailor. Petitioner stated he took the drugs for an escape to get away from everything as well as the bullying he experienced from members of his command.

e. On 21 August 2008, Petitioner received non-judicial punishment (NJP) for: (1) failing to obey a direct order, and (2) public urination. Petitioner did not appeal his NJP.

f. On 13 November 2008, Petitioner's command notified him of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. Petitioner waived his rights (in writing) to consult with counsel, submit statements, and to request an administrative separation board.

g. On 23 December 2008, Petitioner's commanding officer (CO) recommended to the Separation Authority that Petitioner receive an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation, the Petitioner's CO stated:

The only event of significance in [REDACTED] six months onboard is the abuse of over-the-counter cough medication and subsequent urination off the balcony of his [REDACTED] room at [REDACTED]. The urine dripped off the ledge outside the balcony railing onto another member of [REDACTED]. The actions are inconsistent with the Navy's core values of Honor, Courage and Commitment and navy policy for substance abuse. I recommend [REDACTED] be separated from the Navy with a characterization of service of "Other Than Honorable" to reflect the nature of his performance in the Navy and to serve as a deterrent to other members of the command to preserve good order and discipline.

h. On 20 January 2009, the Separation Authority approved and directed Petitioner's discharge for the commission of a serious offense with an OTH discharge characterization. In the interim, on 5 February 2009, Petitioner underwent a drug/alcohol screening wherein he readily admitted using both marijuana and cocaine in December 2008.

i. Petitioner's separation physical examination, on 11 February 2009, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 11 February 2009, Petitioner was discharged from the Navy for misconduct with an OTH characterization of service and was assigned an RE-4 reentry code.

j. A licensed clinical psychologist (Ph.D.) reviewed Petitioner's contentions and the available records, and issued an AO dated 7 November 2024. As part of the Board's review, the Board considered the AO. The AO stated, in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to the circumstances of his separation from

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service...Petitioner contended he incurred mental health concerns from harassment in his unit, which contributed to an attempt at death by suicide and his decision to accept separation from service.

In February 2009, he was evaluated for substance use disorder. He was diagnosed with Alcohol and other substance abuse; and Major Depressive Disorder, single episode in full remission.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use 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. Unfortunately, he has provided no medical evidence to support his claims. He denied current symptoms of depression during his separation physical, and his misconduct was attributed to a desire for separation, rather than medication of a mental health concern.

The Ph.D.'s AO concluded, "it is my clinical opinion that there is in-service evidence 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 substance use disorder."

Following a review of Petitioner's AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

k. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was approximately 1.0. Navy regulations in place at the time of his discharge recommended a minimum trait average of 2.5 in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service.

l. Petitioner requested liberal consideration and clemency in the form of a discharge upgrade. In short, Petitioner argued that his OTH was the result of certain mental health issues due, in part, to harassment within his unit. Petitioner contended that he was bullied and harassed repeatedly by fellow service members, all of which contributed to his overdose and suicide attempt. Petitioner requested that the Board grant liberal consideration that his mental health considerations mitigated the behavior leading to his discharge, and were not outweighed by the seriousness of his minor misconduct. Petitioner proffered on his behalf, [REDACTED], evidence of post-service mental health treatment.

CONCLUSION:

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

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[REDACTED], USN, [REDACTED]

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.

However, in keeping with the letter and spirit of the Hagel, Kurta, and Wilkie Memos, and although the Board does not condone the Petitioner's misconduct, the Board felt that Petitioner's mental health issues mitigated 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 C Conditions)" (GEN), based in part 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, even in light of the Wilkie Memo and after reviewing the record holistically, given the totality of the circumstances and purely as a matter of clemency and leniency, the Board determined that 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 basis for separation or RE-4 reentry code. The Board concluded the Petitioner was properly discharged for misconduct and assigned the correct reentry code based on the totality of his circumstances. The Board found that his discharge and reentry code was proper and in compliance with 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.

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 Certificate of Release or Discharge from Active Duty (DD Form 214), for the period ending 11 February 2009, indicating his character of service was "General (Under Honorable Conditions)."

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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.

1/23/2025

