



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

[REDACTED]
Docket No. 7336-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

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 13 Nov 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 [REDACTED], [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, 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 4 August 1992. Upon his entry, he was administratively counseled for fraudulent entry due to his failure to disclose

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

pre-service marijuana use while he was enlisted in the Delayed Entry Program (DEP). However, he was advised that he would be retained.

c. Petitioner completed a "Prevent" course on 12 June 1993; which he was enrolled to attend to help him increase his self-control and decrease his personal risk. However, by 31 January 1994, he had elected to self-refer for an alcohol use evaluation and was found to be alcohol dependent.

d. On 10 March 1994, Petitioner entered into residential level III alcohol rehabilitation treatment.

e. Petitioner had a period of unauthorized absence (UA) from 0730 to 0927 on 27 May 1994 in relation to an incident of domestic violence (DV). On 12 September 1994, he was convicted by civil authorities for fourth degree DV with a \$500 fine and 60 days of confinement. However, his confinement was suspended along with \$400 of his fine.

f. Due to kissing another sailor while onboard a naval vessel, Petitioner was subject to nonjudicial punishment (NJP) on 5 May 1995 for a single violation of Article 92 of the Uniform Code of Military Justice (UCMJ) due to wrongful failure to obey a written instruction of the [REDACTED]. He was punished with five days of restriction and extra duties.

g. Petitioner completed his formal Level III aftercare program on 19 May 1995.

h. On 22 September 1995, Petitioner received a second NJP for three violations of the UCMJ, that included Article 91 for disrespectful language toward a petty officer, Article 117 for wrongful use of provoking words, and Article 134 for drunk and disorderly conduct. In addition to being issued administrative counseling warning him that continued misconduct could result in administrative separation, Petitioner was awarded 20 days of restriction and extra duty with a suspended reduction to the paygrade of E-2.

i. Petitioner was a passenger in a vehicle which was involved in a drunken driving incident and subject of an incident complaint on 18 October 1995. His statement was taken during the course of an investigation into the incident and reflected that he had again used alcohol after completing his rehabilitation and aftercare.

j. Consequently, Petitioner was notified of processing for administration separation by the reasons of: misconduct due to commission of a serious offense (COSO), pattern of misconduct (POM), and alcohol rehabilitation failure (ARF). With respect to the basis of COSO, his notice listed his specific NJP offenses under Articles 91, 92, and 134 but did not include his Art. 117 offense. Likewise, his notification did not include his civilian conviction as a separate basis or as part of the COSO basis.

k. After consulting legal counsel, Petitioner elected to request a hearing before an administrative discharge board (ADB). On 22 January 1995, the ADB convened to consider the basis of Petitioner's proposed administrative separation. At the conclusion of the proceedings, the ADB panel found by unanimous vote that the basis of COSO was not substantiated because

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

the specified offenses were determined not to have been substantiated by the preponderance of the evidence. However, by unanimous vote, the ADB determined the basis of POM was met due to Petitioner having been subject to three disciplinary actions by way of his civilian conviction and his two NJPs, totaling three disciplinary actions in his current enlistment. Finally, by a vote of two to one, the ADB determined the basis of alcohol rehabilitation failure was met due to Petitioner having been involved in an alcohol-related incident (ARI) after completing level III rehabilitation treatment. By a vote of two to one, the ADB recommended that Petitioner be discharged with a characterization of General (Under Honorable Conditions) (GEN).

l. Petitioner's commanding officer forwarded a recommendation to Chief of Naval Personnel concurring with the findings and recommendations of the majority; noting that Petitioner had been afforded ample time and assistance with his alcohol rehabilitation but continued to abuse alcohol and remain a disciplinary burden to the command.

m. Petitioner's administrative discharge under honorable conditions was approved for the primary basis of POM and he was so discharged on 19 April 1996.

n. Petitioner contends that he experienced in-service stressors to include deployment to the Persian Gulf in support of operations in Somalia and a June 1995 collision between his ship and another vessel. He also states that he experienced racially motivated physical and verbal harassment from an assailant who falsely claimed that he was an aggressor when, instead, he was defending himself. He believes that his GEN character of service is unjust when weighed against all facts and circumstances of his service, his mental health, and his post-discharge character. For the purpose of clemency and equity consideration, he submitted a personal statement, five letters of support, his Department of Veterans Affairs (VA) mental health progress notes, a medical opinion and his VA Disability Benefits Questionnaire (DBQ) regarding his trauma-related diagnoses and his mental health diagnoses.

o. 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 contended he incurred mental health concerns due to the stressors of deployment during the Somalia conflict, problematic alcohol consumption, and a June 1995 collision with another ship. He claimed that he experienced racially motivated physical and verbal harassment but that his assailant falsely claimed that he was the aggressor, which contributed to his separation from service.

Petitioner provided evidence of mental health treatment with the Department of Veterans Affairs (VA) for diagnoses of Bipolar Disorder and Major Depressive Disorder (MDD) in June 2019.

Petitioner submitted additional evidence of mental health treatment at intervals between October 2018 and January 2024. "Patient planned suicide at the age of 32...He was diagnosed with Bipolar Disorder and Major Depressive Disorder at this time..."

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN, XXX-XX-[REDACTED]

Petitioner provided a June 2024 Disability Benefits Questionnaire for diagnoses of Bipolar I Disorder and Other Trauma and Stressor-related Disorder.

The Veteran endorses some symptoms of PTSD relating to the collision between the [REDACTED] and the [REDACTED] during refueling maneuvers, as well as his deployments to [REDACTED] and the [REDACTED]. Due to the significant overlap between symptoms of PTSD and Bipolar Disorder, making a definitive diagnosis of PTSD at this time would require resorting to mere speculation... Given the significant symptom overlap, the current examination indicates that the Veteran meets criteria for a diagnosis of Other Trauma and Stressor-related Disorder at this time, with his symptoms driven primarily by the incident between the [REDACTED] and [REDACTED].

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol 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. Temporally remote to his military service, a VA clinician has diagnosed him with another mental health condition attributed to experiences during his military service. It is possible that his alcohol use may have worsened with exposure to the stresses of military service and the ship collision. However, it is difficult to attribute his misconduct to a mental health condition other than alcohol use disorder, particularly given his claims that his response was in self-defense and mischaracterized in the record. 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 alcohol use disorder."

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 noted Petitioner's misconduct and does not condone it. Additionally, the Board noted that the AO found insufficient objective evidence to attribute Petitioner's misconduct to a mental health condition other than his alcohol use disorder. However, the Board applied liberal consideration to Petitioner's contentions regarding his mental health conditions and also considered mitigating factors that included the duration of his entire period of service, the fact he was administratively discharged with under 80 days remaining on his four-year period of obligated active service, his final trait average of 3.58, and the findings of the ADB members who unanimously determined that there was insufficient evidence to substantiate the basis for

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

commission of a serious offense due to the preponderance of evidence not supporting that he had committed misconduct under Article 91, 92, or 134. As a result, the Board found that the totality of favorable factors Petitioner submitted for consideration of clemency based on his post-service character, in conjunction with liberal consideration of his contended mental health diagnoses, outweighed the misconduct evidenced by his civilian conviction and the remaining NJP offenses. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service and change his reason for separation to reflect a Secretarial Authority discharge.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board concluded 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 4 August 1992, indicating that his "Honorable" discharge, was issued under the authority of "MILPERSMAN 3630900," with a narrative reason for separation of "SECRETARIAL AUTHORITY," and a "JFF" separation code.

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.

2/12/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]