



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

█
Docket No. 7648-24

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, 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 with attachments
(2) Case summary
(3) Advisory Opinion of 20 November 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 characterization be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosure (2) applies.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 13 January 2025 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies including references (b) through (e). In addition, the Board considered enclosure (3), an advisory opinion (AO) from a qualified mental health professional. Although Petitioner was provided an opportunity to respond to the AO, 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 15 July 1999. Between 11 December 2001 to 21 October 2002, Petitioner received nonjudicial punishment (NJP) in two occasions for failure to obey a lawful order, disorderly conduct, and a period of unauthorized absence (UA). Consequently, Petitioner was counseled concerning his previous NJPs and advised that failure to take corrective action could result in administrative separation. On 7 December 2003, Petitioner was honorably discharged by reason of immediate reenlistment.

c. On 8 December 2003, Petitioner began a second period of active duty service. Between 2 February 2004 to 15 March 2004, Petitioner began two periods of UA totaling 37 days. On 19 March 2004, Petitioner received NJP for two periods of UA and drunk and disorderly conduct. Consequently, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and decided to waive his procedural rights. Petitioner's commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service to the Separation Authority (SA). The SA approved the recommendation, and Petitioner was so discharged on 6 April 2004. Upon his discharge, Petitioner was issued a DD Form 214 that did not annotate his previous period of continuous Honorable service.

d. On 16 September 2020, this Board denied the Petitioner's previous request for a discharge characterization upgrade.

e. Petitioner contends, after reenlisting, he served in support of combat operations and was exposed to traumatic experiences during his time assigned the VBSS team; which led to the development of Post Traumatic Stress Disorder (PTSD). Petitioner states upon returning home, he began struggling with his condition, which resulting in problematic behaviors that led to disciplinary action. Petitioner asserts these behaviors were a direct result from his untreated PTSD. Petitioner respectfully ask for consideration of his service and the impact of his medical condition in reevaluating his discharge characterization. Petitioner claims he began his career with earning his ESWS pin as an E-3, advancing to E-5 (GM2), and receiving Flag Letters of Accommodation. Petitioner asserts he extended his service to support VBSS teams and reenlisted while deployed. Post deployment, Petitioner claims he was slated to become Range Master in [REDACTED]. However, his extensive VBSS experience let to untreated PTSD, which persisted after his discharge. For the purpose of clemency and equity consideration, Petitioner provided medical records, excerpts from his military record, and driver's license information.

f. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request and provided the Board with enclosure (3), an advisory opinion (AO). The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received a diagnosis of PTSD attributed to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct which occurred over an extended period of time. Additional records (e.g., post-service mental health records describing the

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Petitioner's symptoms and their specific link to his misconduct) may aid in an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, as described above, the Board determined Petitioner's DD Form 214 fails to annotate Petitioner's period of continuous Honorable service from 15 July 1999 to 7 December 2003 and requires correction.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, his desire for a discharge upgrade and his previously discussed contentions.

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 second enlistment NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board observed that Petitioner was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. Further, the Board substantially agreed with the AO in that, while there is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute the circumstances of his misconduct to PTSD. As explained in the AO, his post-service diagnosis was temporally remote to his service and available records are not sufficiently detailed to establish a nexus with his misconduct. Therefore, the Board 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.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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.

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RECOMMENDATION:

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 6 April 2004, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 15JUL1999 TO 7DEC2003."

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.

2/4/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]