



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

[REDACTED]
Docket No. 8376-24
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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 7 Jan 25

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 for an upgrade of his characterization of service to General (Under Honorable Conditions) (GEN).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 26 February 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). The Board also considered enclosure (3), an advisory opinion 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 regulation 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 Navy and began a period of active duty on 29 September 1989.

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d. On 15 November 1991, Petitioner received non-judicial punishment (NJP) for absence from his appointed place of duty, assaulting a Petty Officer, and disrespect towards a Petty Officer.

e. On 7 September 1992, Petitioner commenced a period of unauthorized absence that concluded upon his surrender to military authorities on 14 September 1992; a period totaling seven days.

f. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary will presume that they have properly discharged their official duties. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that Petitioner submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, Petitioner would have conferred with a qualified military lawyer, been advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner would have acknowledged that his characterization of service upon discharge would be OTH.

g. On 13 July 1993, the separation authority approved Petitioner's request and directed his commanding officer to discharge him with an OTH characterization of service. On 20 July 1993, Petitioner was so discharged.

h. Petitioner previously applied to this Board for an upgrade to his characterization of service. Petitioner was denied relief on 7 June 2012 and 15 March 2021. Before this Board's denial, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 17 July 1995, based on their determination that Petitioner's discharge was proper as issued.

i. Petitioner contends the following injustices warranting relief:

(1) His discharge character of service is unjust because he was clearly suffering from mental health conditions including PTSD at the time of his discharge;

(2) He reported his mental health and drinking issues in hopes of getting help but his mental health continued to decline; he made mistakes that ultimately derailed his military career;

(3) At the time of signing the documents he did not understand what he was signing or the effect that it would have on his discharge and any future benefits that he may be entitled to; he was not given information of what he was signing or the meaning of the documents; and

(4) He felt under duress due to the military treating him like they were just waiting for him to make another mistake so they could dishonorably discharge him.

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j. For purposes of clemency and equity consideration, the Board considered the documentation Petitioner provided in support of his application.

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

There is evidence that the Petitioner was diagnosed with PTSD during his military service and that he stated he intended to "black out" via alcohol to numb his symptoms thereof. It is possible that his period of UA and substance abuse were in fact caused or mitigated by his PTSD symptoms, however assault is not a typical behavior/symptom of PTSD. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief.

The Board found no error in Petitioner's OTH characterization of service discharge for separation in lieu of trial by court martial. However, because Petitioner based his claim for relief in whole or in part upon his PTSD, the Board reviewed his application in accordance with the guidance of references (b) through (e). The Board applied liberal consideration to Petitioner's PTSD experience and the effect that it may have had upon his misconduct. Ultimately, the Board agreed with the AO conclusion that there is sufficient evidence of a mental health condition that may be attributed to military service.

In applying liberal consideration to Petitioner's claimed PTSD any effect that it may have had upon his misconduct, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's PTSD may have had upon his misconduct. After thorough review, the Board found that Petitioner's PTSD did have an effect on his misconduct and the mitigating circumstances of his PTSD outweighed the misconduct for which Petitioner was discharged. Therefore, the Board determined the interests of justice are served by upgrading Petitioner's characterization of service to GEN.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even under the liberal consideration standards for mental health

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conditions, and that a GEN discharge characterization and no higher was appropriate. Further, the Board determined Petitioner's reason for separation, assigned reentry code and separation 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.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 20 July 1993, his characterization of service was "General (Under Honorable Conditions)."

That no further correction action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

3/21/2025

