



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

[REDACTED]  
Docket No. 8484-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [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), undated  
(3) Rebuttal to AO, undated

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 and that his narrative reason for separation be changed to "Secretarial Authority." Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 17 March 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, enclosure (2), an advisory opinion (AO) furnished by qualified mental health provider, and enclosure (3), Petitioner's response to the AO.

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 initially enlisted into the Navy's Delayed Entry Program but was administratively separated in an entry-level status on 20 May 1996, with uncharacterized service, after refusing to enlist. However, he was granted a waiver for his discharge, reenlisted, and began a period of active duty on 19 December 1997. Petitioner reenlisted on 15 November 2001.

c. Although Petitioner was arrested by civilian authorities in January 2002 for the offense of driving while intoxicated, this offense was not documented in his service record via an administrative remark.

d. On 13 September 2004, Petitioner was subject to NJP for violations of the Uniform Code of Military Justice (UCMJ) under Article 112a, for wrongful use of cocaine, and Article 134, for adultery from the period of October 2002 through August 2004. Concurrently, he was notified of processing for administrative separation by reason of misconduct due to drug abuse, acknowledged his rights incident thereto, and elected to voluntarily waive his right to a hearing before an administrative separation board.

e. In his recommendation for Petitioner's discharge under Other Than Honorable (OTH) conditions, his commanding officer's letter commented that the Navy's drug policy was clear and that Petitioner had demonstrated a complete disregard for the rules and regulations which govern the conduct of members of the armed forces.

f. The separation authority directed Petitioner's administrative separation with an OTH characterization of service, and he was so discharged on 5 October 2004. At the time his record of discharge was issued, the period of continuous honorable service for his enlistment from 19 December 1997 through 14 November 2001 was omitted from his block 18 remarks.

g. Petitioner previously applied to the Board contending that he served honorably prior to his drug abuse and should have been given the opportunity to rehabilitate. He submitted evidence of post-service behavior and conduct for consideration of clemency and to demonstrate that he is not a drug abuser. His request was considered on 15 December 2023 and denied. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board also considered the negative impact his conduct likely had on the good order and discipline of his unit. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. Therefore, the Board concluded that his discharge was proper and equitable under standards of law and discipline and that his OTH discharge accurately reflects his conduct during his period of service.

h. Petitioner contends that he supported combat operations in [REDACTED] and Iraq during periods of high operational tempo and performed dangerous work with munitions and bombs. He now asserts that he experienced mental health concerns as a result of his exposure to these conditions, believes that his misconduct was the result of his past traumas, and argues that it was an error not to consider his mental health at the time of his discharge. In support of his request,

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he submitted his counsel's brief, a personal statement, five character letters with several Google reviews, a letter from his Department of Veterans Affairs (VA) social worker, and a letter from his therapist regarding his treatment for depression and post-traumatic stress disorder (PTSD) since May 2024.

i. Because Petitioner now contends that a mental health condition affected the circumstances of the misconduct that resulted in his discharge, the Board requested the AO at enclosure (2) for consideration. The AO states in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided two letters noting recent treatment for depression and PTSD that are temporally remote to service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. 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 is temporally remote to service. There is insufficient evidence to attribute his misconduct to a mental health condition."

j. In response to the AO, Petitioner submitted additional evidence in support of his application. After reviewing the rebuttal evidence, the AO remained unchanged.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as previously discussed, the Board observed Petitioner's DD Form 214 fails to annotate his period of continuous Honorable service and requires correction.

Notwithstanding the recommended corrective action below, the Board determined no additional relief was warranted. 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 change to his reason for separation. Further, the Board considered Petitioner's 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 NJP during his last enlistment and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved a drug offense. The Board concurred with the AO regarding the lack of objective

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evidence of any discernable nexus between Petitioner's in-service use of cocaine, or his civil DWI offense, and his temporally remote mental health diagnoses. The Board noted that Petitioner obtained his diagnoses within six months the Board's denial of his previous request for an upgrade on the basis of clemency; in which he did not reference his contended traumas from his deployment in support of combat operations.

Regardless, even applying liberal consideration to Petitioner's new mental health contentions, the Board found, consistent with its previous decision, that the severity of his in-service misconduct significantly outweighs the mitigating factors presented for consideration. In addition to the Board's previously expressed findings regarding the severity of Petitioner's in-service abuse of cocaine, the Board observed that his civil DWI offense reflected an apparent pattern of his in-service substance abuse behavior and, more significantly, constituted a blatant disregard for the safety of other motorists and pedestrians. Furthermore, the Board found the timing of Petitioner's recent diagnosis and the significant resulting change to his contentions of concern with respect to Petitioner's candor before the Board.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that his misconduct and disregard for good order and discipline clearly merited his discharge. 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.

In view of the foregoing, the Board finds the existence of an error warranting the following corrective action.

#### 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 5 October 2004, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 19DEC1997 TO 14NOV2001."

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

4/8/2025

