



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

█
Docket No. 8725-24
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █, █,
USN, █

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(b) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(2) Case Summary

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 his discharge characterization be upgraded.

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 12 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). In addition, the Board considered 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 9 March 1988. After a period of continuous Honorable service, he immediately reenlisted on 25 January 1991 and commenced a second period of active duty. On 2 December 1993, he received non-judicial punishment (NJP) for an unspecified offense. On 23 March 1994, he received his second NJP for unauthorized absence (UA). That same day, Petitioner began another period of UA that

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ended with his surrender on 20 April 1994. On 22 April 1994, Petitioner began another period of UA that ended with his surrender on 22 May 1994. As a result, Petitioner was placed in pre-trial confinement for his UA, orders violations, making and uttering worthless checks, and breaking restriction. On 7 June 1994, Petitioner requested administrative separation under Other Than Honorable (OTH) conditions in lieu of trial by court-martial. The separation authority approved the request and ordered that Petitioner be separated from the Navy with an OTH characterization of service in lieu of trial by court-martial. On 6 July 1994, Petitioner was so discharged. Upon his discharge, he was issued a DD Form 214 that did not annotate his period of continuous Honorable service from 9 March 1988 to 24 January 1991.

c. Petitioner contends that his disciplinary issues stemmed from undiagnosed and undocumented PTSD while serving in the [REDACTED]. He states his PTSD derived from witnessing an [REDACTED] crash onboard the [REDACTED] and that, upon returning home from deployment, his wife had left him. Petitioner states that he wrote checks while drinking heavily and did not have the funds to cover them. For the purpose of clemency and equity consideration, the Board considered the totality of Petitioner's application.

d. Because Petitioner raised the issue of his mental health and its possible impact on his misconduct, the Board considered the AO. The AO stated 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. In his statement to his CO preceding discharge, he did not reference any traumatic event/events that could have mitigated his misconduct. He has not provided any medical evidence in support of his claim. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that a mental health condition caused his misconduct leading to unfavorable discharge."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. Specifically, as previously discussed, Petitioner's DD Form 214 does not 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, Petitioner's desire for a discharge upgrade and his previously discussed contentions.

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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 NJPs and request to be discharged in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. Petitioner's conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. Further, the Board also noted that the misconduct that led to Petitioner's request to be discharged in lieu of trial by court-martial was substantial and determined that he already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing Petitioner the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board concurred with the AO and determined there is insufficient evidence that a mental health condition caused his misconduct leading to unfavorable discharge. As explained in the AO, Petitioner provided no medical evidence in support of his claim and was never diagnosed with a mental health condition while on active duty. 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 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. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

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 July 1994, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 9MAR1988 TO 24JAN1991."

No further changes be made to Petitioner's record.

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.

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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.

4/8/2025

