



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

[REDACTED]
Docket No. 8761-24
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) 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

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] reviewed Petitioner's allegations of error and injustice on 12 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). 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 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 23 August 2002.

d. On 6 December 2002, Petitioner reported to [REDACTED] or duty.

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e. On 13 October 2003, Petitioner received non-judicial punishment (NJP) for wrongful use of a controlled substance.

f. Unfortunately, some 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 (as is the case at present), will presume that they have properly discharged their official duties.

g. The record shows on 1 December 2003, the separation authority directed Petitioner's Other Than Honorable (OTH) discharge from the Navy by reason of misconduct due to drug abuse. Petitioner was so discharged on 5 December 2003.

h. Petitioner contends that he incurred mental health concerns due to the stressors of military service, including poor morale and leadership on his ship, unprofessionalism, and fraternization among Sailors.

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

j. 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 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 treatment for mental health concerns that may be attributed to his service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service marijuana use that may have been under-reported and the length of time between separation from service and the onset of mental health symptoms sufficiently interfering as to require treatment. 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 a civilian clinician 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."

CONCLUSION

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

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The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. 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 post-service evidence of a mental health condition that may be attributed to military service.

In applying liberal consideration to Petitioner's mental health condition and 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 mental health condition may have had upon his misconduct. After thorough review, the Board found that Petitioner's mental health condition did have an effect on his misconduct and the mitigating circumstances of his mental health condition 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 conditions, and that a GEN discharge characterization and no higher was appropriate.

Further, the Board determined Petitioner's narrative reason for separation, separation code and assigned reenry code remains appropriate in light of his record of misconduct and unsuitability for further military service. Ultimately, the Board determined 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 5 December 2003, Petitioner's 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.

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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 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.

3/10/2025

