



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

[REDACTED]
Docket No. 9181-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,
[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) 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 that his final discharge be upgraded to "Honorable" and that his discharge record be corrected to reflect his period of Honorable service from his previous enlistments. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 21 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). Additionally, the Board considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to Petitioner. Although Petitioner was afforded an opportunity to submit a rebuttal, 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 an initial period of active duty on 20 June 1985. Although he received one nonjudicial punishment in April 1987 for a violation of Article 112a of

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the Uniform Code of Military Justice (UCMJ) due to wrongful use of marijuana, he was retained without administrative processing and was honorably discharged on 9 February 1989 for immediate reenlistment. He was issued a separate discharge record documenting his first period of enlistment.

c. On 10 February 1989, Petitioner began a second period of active duty which he served until his second reenlistment, for a third period of active duty, on 9 July 1998. He was not issued a separate discharge record at end of his second period of enlistment due to changes in regulations governing the issuance of the Certificate of Release or Discharge from Active Duty (DD Form 214).

d. On 12 October 1999, Petitioner's urinalysis was positive for cocaine metabolites.

e. Consequently, Petitioner was convicted by Special Court-Martial (SPCM) for a single charge and specification of violation of the Uniform Code of Military Justice (UCMJ) under Article 112a for wrongful use of cocaine. He was sentenced to a reduction in grade from E-7 to E-5.

f. Following his SPCM, Petitioner was processed for administrative separation for misconduct due to drug abuse and, per his "HKK" separation code, waived his right to an administrative separation board hearing; however, his administrative separation documents were not retained in his service record.

g. Petitioner was discharged under Other Than Honorable (OTH) conditions on 6 April 2000. His final DD Form 214 did not include remarks in block 18 to document his period of continuous Honorable service during his second period of enlistment.

h. Petitioner contends that his current discharge record renders him ineligible for veteran benefits, even from his Gulf War service, and states that he served honorably during his second period of enlistment.

i. Petitioner submits clemency arguments with respect to having served for nearly 15 years and attained the rank of E-7 / chief petty officer, with three Good Conduct medals, prior to his discharge for drug abuse.

j. With respect to his final characterization of service and his drug abuse misconduct, he describes traumatic experiences while participating in off-shore operations near Kuwait during the Gulf War. He attributes his poor decision making during his third enlistment to his increased alcohol use, which developed from self-medication of his post-traumatic stress disorder (PTSD). He also asserts that he never properly evaluated for a substance use disorder prior to his discharge and was not offered rehabilitation treatment as required by regulations; but asserts that he has achieved sobriety since his discharge. In support of his mental health contentions and for the purpose of clemency and equity consideration, he submitted a psychiatrist's letter with a mental health evaluation.

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k. Because Petitioner contends that a mental health condition affected her discharge, the Board requested the AO at enclosure (2) for consideration. 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. He has received treatment for PTSD and other mental health concerns that are temporally remote to his military service and appear unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service substance use that appears to have continued in service. 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 insufficient evidence of a diagnosis of PTSD or another mental health concern that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. As explained earlier, Petitioner's final DD Form 214 does not annotate his second enlistment period of continuous Honorable service 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 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it included a drug offense. 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 concurred with the AO that there is insufficient evidence that Petitioner experienced PTSD or another a mental health condition during his military service which might have contributed to his misconduct. Additionally, the Board noted that Petitioner had a drug abuse offense during his first period of enlistment, was retained and permitted to continue serving, and achieved the rank of chief petty officer. The Board determined Petitioner was given an opportunity to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. His conduct not only showed

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a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command.

Therefore, 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 a discharge upgrade or granting an upgrade 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.

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 Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 6 April 2000, adding a block 18 remark to document his "Period of continuous honorable service from 10 February 1989 through 8 July 1998."

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.

3/20/2025

