



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

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Docket No. 9746-24

Ref: Signature date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ■■■■■■■■■■, USN,
XXX-XX-■■■■■

Ref: (a) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) USD Memo of 25 August 2017 (Kurta Memo)
(d) USECDEF Memo of 25 July 2018 (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 to upgrade his characterization of service to Honorable and change his narrative reason for separation.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■, 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 (d). The Board also considered an advisory opinion (AO) from a qualified mental health professional and 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's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Navy and began a period of active duty on 8 November 1993.

c. On 18 February 1999, Petitioner received non-judicial punishment (NJP) for disrespect toward a superior commissioned officer, disrespect toward a warrant officer, noncommissioned officer, or petty officer, assault, and communicating a threat.

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d. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense. Petitioner waived his procedural right, to consult with military counsel, and to present his case to an administrative discharge board.

e. The commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending Petitioner be assigned an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and Petitioner was so discharged on 15 March 1999.

f. Petitioner contends that he did not know that it was his Chief who walked up behind him and grabbed his arm and reacted as any "normal person" would have to defend himself. He was taken to NJP, no one would listen to him, and he accepted getting out to take care of his family. For the purpose of clemency and equity consideration, the Board considered the evidence provided by Petitioner.

g. Because Petitioner raised the issue of a mental health condition, the Board considered the 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, a civilian provider has diagnosed a mental health condition that has been deemed to have onset during service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given his claims that his misconduct was self-defense due to harassment and based on a misinterpretation of the facts. 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 mental health provider 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."

In response to the AO, Petitioner provided 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 concludes that Petitioner's request warrants partial relief. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with references (b) through (d).

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While the Board does not condone Petitioner's misconduct, after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency and equity, they concluded that the Petitioner merits a discharge upgrade to General (Under Honorable Conditions). In making this finding, the Board considered the nature of Petitioner's misconduct and his otherwise superior performance prior to his single incident of misconduct.

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 and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Additionally, the Board determined Petitioner's reason for separation and reentry code remain appropriate in light of his misconduct and unsuitability for further military service. Ultimately, the Board determined 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:

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, for the period ending 15 March 1999, indicating his characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to Petitioner's 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.

3/13/2025

