



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

██████████
Docket No. 10159-24
Ref: Signature Date

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

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

Ref: (a) 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 with attachments
(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 that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 2 May 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, and applicable statutes, regulations, and policies, to include references (b) through (d). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and Petitioner's AO rebuttal submission.

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.

b. Although enclosure (1) was not filed in a timely manner, the statute of limitation was waived in accordance with the Kurta Memo.

c. The Petitioner enlisted in the U.S. Navy and began a period of active service on 12 July 2010.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED], USN, XXX-XX-[REDACTED]

d. Petitioner was arrested by civilian authorities and charged with driving under the influence of alcohol when he was involved in a motor vehicle accident. At the time of the car accident the Petitioner's BAC was approximately 0.16. Petitioner was under twenty-one (21) years of age at the time of his accident.¹

e. On 21 February 2012, Petitioner underwent a medical evaluation. Medical personnel determined that Petitioner did not meet criteria for a mental health diagnosis or condition.

f. On 15 March 2012, Petitioner received non-judicial punishment (NJP) for: (1) unauthorized absence (UA), (2) failing to obey a lawful order, and (c) the drunken or reckless operation of a vehicle. Petitioner was afforded his due process rights prior to electing to receive his NJP and did not appeal his NJP. A portion of the adjudged NJP was suspended.

g. On the same day, Petitioner's command issued him a "Page 13" retention warning (Page 13) documenting his three (3) NJP offenses. The Page 13 expressly warned him that any further deficiencies in his performance and/or conduct may result in disciplinary action and/or in processing for administrative separation.

h. On 23 March 2012, the Petitioner's command vacated and enforced the suspended portion of his NJP due to his continuing misconduct. On 6 April 2012, the Petitioner received NJP for failing to obey a lawful order or regulation.

i. Following his second NJP, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to a pattern of misconduct. In the interim, between 23-25 April 2012, Petitioner attended an Alcohol Impact Course but only satisfactorily completed approximately one-half of the twenty (20) hours of the course. Ultimately, on 27 April 2012, the Petitioner was discharged from the Navy for misconduct with a General (Under Honorable Conditions) ("GEN") characterization of service and assigned an RE-4 reentry code.

j. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB). On 23 August 2023, the NDRB granted partial relief by changing Petitioner's narrative reason for separation and separation code to reflect a Secretarial Authority discharge. However, the NDRB determined Petitioner's assigned characterization of service and reentry code remained appropriate.

k. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was approximately 1.75. Navy regulations in place at the time of his discharge recommended a minimum trait average of 2.50 in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service.

l. In short, Petitioner contended, in part: (1) a plain reading of the NDRB's 2023 decision justified his discharge upgrade, (b) the NDRB's prima facie admission "is the proper legal

¹ Petitioner was ultimately convicted of misdemeanor DUI by civilian authorities shortly after his Navy discharge.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED], USN, XXX-XX-[REDACTED]

impetus to grant the service member the justifiable corrections to his U.S. Naval Record,” (c) Petitioner is looking to complete his service to his country, and not for the sole purpose to enhance his reenlistment and educational opportunities, and (d) for the past 12 years the Petitioner has worked diligently graduate from college and become a registered nurse who has been working steadily caring for patients and his community. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

m. A licensed clinical psychologist (Ph.D.) reviewed Petitioner’s contentions and the available records and issued an AO dated 25 February 2025. As part of the Board’s review, the Board considered the AO. The AO stated, in pertinent part:

Petitioner contends he incurred mental health issues during military service, which may have contributed to the circumstances of his separation from service. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He received NJP following his DUI and accident. He also received NJP for operating a vehicle while intoxicated, UA, and failure to obey a lawful order. PTSD symptoms characteristically manifest several months following a traumatic event. In this case, it appears as though his misconduct was primarily due to alcohol misuse and poor decision-making. The infraction following the event – failure to obey a lawful order – is not typical behavior that is caused by PTSD. Furthermore, he was evaluated by medical personnel following the event and was not found to meet any criteria for any mental health diagnosis. His participation in recommended programming was sub-par. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The Ph.D. concluded, “it is my clinical opinion that there is insufficient evidence of mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

Following a review of Petitioner’s AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner’s request merits partial relief. Specifically, the Board noted that when the NDRB made their administrative changes to Petitioner’s DD Form 214 to both the narrative reason for separation and separation code it failed to make the appropriate corresponding conforming change to the listed separation authority. Thus, the Board concluded that an administrative change to Petitioner’s DD Form 214 should be made to reflect that the block 25 separation authority should reflect the appropriate “Secretarial Authority” provision in the MILPERSMAN.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED], USN, XXX-XX-[REDACTED]

Notwithstanding the recommended corrective action below, the Board determined that Petitioner's assigned characterization of service and reentry code 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 his previously discussed contentions.

After thorough review, the Board concluded that Petitioner's potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to Petitioner's record of service and his contentions about any traumatic or stressful events he experienced and their possible adverse impact on his service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and Petitioner's misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of his discharge. As a result, the Board concluded that Petitioner's misconduct was not due to mental health-related conditions or symptoms.² Even if the Board assumed that Petitioner's misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of his cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that Petitioner's misconduct was intentional and willful, and demonstrated he was unfit for further service. The Board also 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.

Further, the Board found no credible and convincing evidence in the record regarding any command misconduct, improper motives, or abuses of discretion in the investigating, handling, and processing of his NJPs or his administrative separation. The Board unequivocally concluded that Petitioner's administrative separation for his cumulative misconduct was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

The Board also did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization GEN or under other than honorable conditions (OTH) is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

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 in discipline clearly merited his discharge. The Board also noted that Petitioner was fortunate to have received a GEN characterization, as his misconduct could just have easily merited an OTH characterization.

² The Board noted in Petitioner's second NDRB application he had contended, in part, that his PTSD was caused by his drunk driving accident. Thus, the Board thus determined it was a factual impossibility for such mental health condition or related symptoms to mitigate the majority of the misconduct underlying his discharge.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED], USN, XXX-XX-[REDACTED]

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 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 foregoing, the Board finds the existence of a material error warranting 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 27 April 2012, to reflect the following comment added to the Block 25 Separation Authority section:

"MILPERSMAN 1910-164."

Following the corrections to the DD-214 for the period ending 27 April 2012, that all other information currently listed on such DD-214, as previously amended by a DD Form 215 dated 22 January 2024, remains the same.

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.
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.

5/8/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]