

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

b. Petitioner enlisted in the Navy and began a period of active duty on 6 December 1984. He was honorably discharged on 7 December 1988² and immediately reenlisted for a second period of active service.

c. He served a second honorable period of active service through 6 December 1992 and immediately reenlisted for a third period of active service on 7 December 1992.

d. On 22 December 1992, the family advocacy case review committee substantiated physical abuse of Petitioner by his spouse. As a result, on 6 January 1993, a military protective order (MPO) was issued to protect Petitioner from his spouse and from the potential of further allegations.

e. On 11 February 1993, family advocacy substantiated an incident of mutual physical abuse between Petitioner and his spouse. It recommended that Petitioner attend Alcoholics Anonymous and that his spouse receive drug abuse counseling and attend Narcotics Anonymous.

f. On 26 March 1993, Petitioner's driving privileges were revoked due to driving on a suspended license.

g. On 2 September 1993, another MPO was ordered following further domestic incidents between Petitioner and his spouse. He was also given formal counseling, on 13 September 1993, to ensure his understanding of the terms of the MPO.

h. On 15 September 1993, Petitioner left a message threatening his spouse's life.

i. Family advocacy substantiated two additional incidents on 16 September 1993: the first, for mutual abuse; and the second, for abuse of Petitioner by his spouse.

j. Petitioner was placed into pre-trial confinement and later tried by Special Court-Martial (SPCM) on 13 October 1993. Pursuant to a pre-trial agreement, Petitioner pleaded guilty to violation of the Uniform Code of Military Justice (UCMJ) Article 128, for kicking his spouse in the face with his foot on 29 August 1993, and Article 92, for violating the MPO by wrongfully attempting to telephone his spouse on 21 September 1993. Petitioner was sentenced to four months of confinement with credit for his pre-trial confinement.

k. On 22 March 1994, Petitioner was notified of processing for misconduct, as evidenced by his SPCM conviction, and he requested a hearing before an administrative separation board.

l. Petitioner's administrative board hearing convened on 23 May 1994. The members unanimously found that the basis for separation was substantiated by a preponderance of the evidence and recommended, by split vote, he be separated with a General (Under Honorable Conditions) characterization of service.

² Petitioner received a separate Certificate of Release or Discharge from Active Duty (DD Form 214) for his first enlistment period.

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m. On 21 July 1994, Commander, Naval Personnel Command, directed that Petitioner be separated under honorable conditions by reason of misconduct due to commission of a serious offense. Petitioner was so discharged on 29 July 1994.

n. Petitioner was issued a second DD Form 214 following his administrative discharge that did not document Petitioner's period of continuous Honorable service during his second reenlistment.

o. Petitioner previously applied to the Naval Discharge Review Board (NDRB) contending that his spouse during his military service had drug dependency issues, had seriously injured him with a kitchen knife, and had placed his life in danger due to her drug user acquaintances. The NDRB considered his request, on 18 September 1996, and denied relief based on a finding his record was proper as issued.

p. Petitioner contends that he is paralyzed and living in a nursing home. He also claims to have an undiagnosed mental disorder. In support of his contentions, he submitted hospital records and a power of attorney.

q. Because Petitioner contends that a mental health condition affected his discharge, the Board requested enclosure (2). 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior 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 considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as discussed previously, Petitioner's second DD Form 214 does not annotate his period of continuous Honorable service and requires correction.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's characterization of service remains appropriate.

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The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. While the Board carefully considered Petitioner's contention for mitigation, the Board noted Petitioner did not deny committing the misconduct and pleaded guilty at his SPCM. Therefore, the Board determined the presumption of regularity applies to the finding that Petitioner committed the misconduct that formed the basis of his administrative separation and no error exists with his General (Under Honorable Conditions) characterization of service.

The Board also applied liberal consideration to Petitioner's claim that he suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which Petitioner was discharged in accordance with the Kurta Memo. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact Petitioner provided no medical evidence regarding his mental health issues. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which Petitioner was discharged was excused or mitigated by a mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and recognized the same concerns raised in the AO. Moreover, 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 Petitioner's serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its potential effect upon his conduct in accordance with the Kurta Memo, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's contentions, the totality of Petitioner's service, Petitioner's need for veterans' benefits, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, Petitioner's mental health issues and current medical circumstances, Petitioner's advanced age, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of Petitioner's misconduct far outweighed all of the mitigating factors combined. In particular, the Board observed that Petitioner's final period of enlistment was fraught with marital discord and multiple incidents substantiated by the family advocacy case review committee. Although each of those incidents included abuse of Petitioner by his spouse whereas only half of the incidents included mutual abuse on his part, his domestic issues did not justify kicking his spouse in the face with his foot, issuing threats, or violating the MPO by attempting to contact her, which the Board found fully evidenced by his SPCM conviction. The Board found that Petitioner received significant consideration of the mitigating factors of his domestic strife by not receiving an adjudged sentence which included a punitive discharge and being issued a General (Under Honorable Conditions) characterization of service for misconduct that normally resulted in an Other Than Honorable discharge. While the Board noted that flawless service is not required to receive an Honorable characterization of

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service, the nature, gravity, and cumulative effect of Petitioner's misconduct led them to conclude that his service was not Honorable. Finally, the Board believed that it would be unjust to characterize Petitioner's less than honorable service in the same manner as the service of the thousands of service members who, unlike Petitioner, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of Petitioner's discharge to Honorable to be warranted in the interests of justice.

In view of the foregoing, the Board finds the existence of an injustice 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 29 July 1994, correcting Block 18, "Remarks" to indicate:

"CONTINUOUS HONORABLE ACTIVE SERVICE FROM 881208 UNTIL 921206."

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.

2/24/2026

