



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 7544-25
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, ██████████

Ref: (a) Title 10 U.S.C. §1552
(b) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 17 Dec 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 for an upgrade of his characterization of service to General (Under Honorable Conditions).

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 20 January 2026 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) and (c). In addition, the Board considered enclosure (3), 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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider Petitioner's case on its merits.

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 18 August 2003.

d. On 5 December 2005, Petitioner received non-judicial punishment (NJP) for assault on another Sailor. Subsequently the Petitioner was issued a counseling warning.

e. On 20 January 2006, Petitioner received his second NJP for assault on another Sailor.

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f. On 14 November 2006, Petitioner began a period of unauthorized absence (UA) that ended on 9 December 2006.

g. On 14 December 2006, Petitioner was found guilty at summary court-martial (SCM) for missing ship's movement, the aforementioned UA of 25 days, and another UA totaling nine hours. Petitioner was sentenced to reduction in rank, forfeiture of pay and confinement.

h. Subsequently, Petitioner was notified of administrative separation processing for misconduct pattern of misconduct and commission of a serious offense. Petitioner waived his right to consult with counsel and waived his right to an administrative board.

i. In the meantime, on 11 January 2007, Petitioner received his third NJP for a six hour UA.

j. The CO made his recommendation to the Separation Authority (SA) that Petitioner be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation on the basis of pattern of misconduct and Petitioner was so discharged on 16 February 2007.

k. Petitioner contends unsafe living conditions, spousal substance abuse, workplace bullying, and lack of support led to emotional distress and UA. Petitioner also contends that he went to Navy legal for support and also brought forward serious concerns of ongoing bullying and harassment from multiple superiors; which triggered an internal investigation. Unfortunately, despite these efforts, he felt isolated and unsupported. Lastly, Petitioner contends he had a few disciplinary issues during his time, one of which involved a physical altercation during deployment, and takes responsibility for his actions. However, he pointed out it is important to note that he was provoked and believes the disciplinary action taken against him was influenced by his physical stature and by racial bias; as he was the only one reprimanded in the incident.

l. As part of the Board's review, a qualified mental health professional reviewed Petitioner's request 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. 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, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 diagnosis 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."

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In response to the AO, Petitioner provided medical evidence of civilian treatment of mental health concerns from 2020 to the present. After reviewing Petitioner's rebuttal evidence, the AO remained unchanged.

CONCLUSION

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

The Board found no error in Petitioner's OTH characterization of service discharge due to his pattern of misconduct. The Board noted, despite his claims that he was provoked and treated differently than others based on his size and race, Petitioner accepted responsibility for his actions.

However, because Petitioner based his claim for relief in whole or in part upon a mental health condition, the Board 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 he 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's medical evidence is temporally remote to his service. 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 his mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and, again, found his medical evidence to be too remote. 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 his 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, the totality of Petitioner's service, his relative youth and immaturity at the time of his misconduct, the negative effect his discharge has had on his life, his rehabilitation efforts, his post-service record of accomplishments, his remorse, his service to his community, the character references he provided for review, and the passage of time since his discharge.

While the Board does not condone Petitioner's misconduct, after thorough review and weighing the nature of Petitioner's misconduct against the mitigating factors in his case, the Board determined, purely as a matter of clemency and equity, the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN). Further, based on the same rationale, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to reflect a Secretarial Authority discharge.

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Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. While the Board considered the guidance that flawless service is not required for an Honorable characterization of service, the Board determined Petitioner's misconduct was not minor and sufficiently serious to merit only a GEN characterization of service. In making this determination, the Board considered that Petitioner was involved in two assaults against Sailors and possessed an overall trait average below what was required to be considered for an Honorable character of service.

The Board also concluded Petitioner's assigned reentry code remains appropriate in light of his record of 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:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 16 February 2007, he was discharged with a "General (Under Honorable Conditions)" characterization of service, narrative reason for separation of "Secretarial Authority," SPD code of "JFF," and separation authority of "MILPERSMAN 1910-164."

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.

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.

1/30/2026

