



Docket No. 7953-25
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) Title 10 U.S.C. §1552
(b) SECDEF Memo of 13 Sep 14 (Hagel Memo)
(c) USECDEF Memo of 25 Aug 2017 (Kurta Memo)
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)
(3) Advisory opinion of 2 Feb 26

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 Honorable, and a change to his narrative reason, separation code, and reentry code.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 31 March 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) through (d). 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 regulations within the Department of the Navy.

b. Although the enclosure was not filed in a timely manner, the statute of limitation was waived in the interests of justice.

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 29 May 1980. As part of his enlistment processing, Petitioner admitted to petty larceny and destruction of

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property but a waiver was not required. Petitioner was granted a waiver for the illegal use of a controlled substance.

d. On 10 December 1982, Petitioner was convicted by a special court-martial (SPCM) for conspiring to commit larceny, larceny of \$390, and forgery of a government paycheck. Petitioner was sentence to confinement on bread and water, restriction, forfeiture of pay, reduction in rank. Petitioner was also issued a counseling warning for his misconduct and advised that any further deficiencies in his performance and or conduct may result in disciplinary action and in processing for administrative discharge.

e. 20 March 1983, Petitioner was issued a counseling warning for his record of unsatisfactory performance that included unauthorized absence (UA), dereliction of duty, sleeping while on duty, and poor job performance. He was again warned that continued deficiencies in his performance could result in administrative separation processing.

f. On 5 May 1983, Petitioner received non-judicial punishment (NJP) for two specifications of failure to go to his appointed place of duty.

g. On 2 June 1983, Petitioner received his second NJP for failure to go to restriction muster on two occasions.

h. Consequently, Petitioner was notified of administrative separation processing for misconduct commission of a serious offense and pattern of misconduct. Petitioner elected a hearing before an administrative discharge board (ADB), which met on 24 June 1983. The ADB determined he met both bases for separation and recommended he be discharged with an Other Than Honorable (OTH) characterization of service. The Commanding Officer concurred and forwarded the ADB's recommendation to the Separation Authority (SA). The SA accepted the recommendation for the basis of pattern of misconduct and Petitioner was so discharged on 4 August 1983.

i. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for relief. In his application to the NDRB, Petitioner argued that his discharge was inequitable because it was too severe based on his misconduct and his overall performance traits. The NDRB denied the request, on 6 September 1985, after determining his discharge was proper as issued.

j. Petitioner now contends: (1) he witnessed deaths and serious injuries on the flight deck that ultimately left him traumatized and emotionally wrecked, (2) while working on the flight deck as the carrier was conducting flight operations underway in preparation for deployment, the flight deck safety officer waived off an approaching aircraft to permit the landing wire to be retracted. The plane landed and its tailhook snapped the landing wiring causing it to whip across the flight deck and kill a Sailor and injuring three other Sailors, (3) following his second deployment, he witnessed the culture in AIMD, where he was assigned, change to a toxic atmosphere rampant with favoritism, elitism, and general division and (4) his mental health symptoms impacted his performance and clouded his judgment. For purposes of clemency and equity consideration, the Board considered the evidence Petitioner provided in support of his application.

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k. In light of the Petitioner's assertion of mental health condition, the Board requested enclosure (3). The AO stated in pertinent part:

There is evidence that he suffered from a TBI with no loss of consciousness. Upon follow-up one month after the injury, all systems were found to be within normal limits aside from lingering headaches. Larceny, conspiring to steal and forgery cannot be said to have been caused by a TBI such as the Petitioner sustained. He submitted post-service evidence of PTSD and Major Depressive Disorder. It is possible that he was suffering from PTSD (stemming from witnessing the death of a shipmate) which could have caused avoidant symptoms and subsequent UA; however, larceny, conspiring to steal and forgery are not typical behaviors caused by PTSD or Major Depressive Disorder. Additional records (e.g., active-duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The AO concluded, "Based on the available evidence, it is my clinical opinion that there is sufficient evidence of an in-service TBI and post-service PTSD and Major Depressive Disorder. There is insufficient evidence to attribute *all* of his misconduct to PTSD, TBI or any other mental health condition." (Emphasis in original)

i. In response to the AO, Petitioner submitted additional evidence in support of his application. After reviewing the 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 partial relief.

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. The Board noted he did deny committing the misconduct that formed the basis for his administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to Petitioner's administrative separation and no error exists with his record.

However, because Petitioner raised the issue of TBI and mental health, the Board also applied liberal consideration to Petitioner's claim that he suffered from a mental health condition and TBI, and to the effect that these conditions may have had upon the conduct for which he was discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition and TBI that may be attributed to military service. This conclusion is supported by the AO and the post-service medical evidence Petitioner provided in support of his claim. However, even applying liberal consideration, the Board found insufficient evidence to conclude that all the misconduct for which Petitioner were discharged was excused or mitigated by his TBI or mental health condition. In this regard, the Board simply had insufficient information available upon

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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 his TBI or 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 claim that he suffered from a mental health condition and TBI, and to the effect that these conditions may have had upon the conduct for which Petitioner was discharged in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's desire for an upgrade to his characterization of service, his contentions, the totality of his service, his relative youth and immaturity at the time of his misconduct, the negative effect his discharge has had on his life, his mental health issues, his advanced age, the evidence he provided in support of his application, and the passage of time since his discharge.

The Board found that the mitigating factors were sufficient to justify some equitable relief. Specifically, the Board found that Petitioner's misconduct was sufficiently outweighed by his mental health condition to warrant an upgrade to his characterization of service. 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).

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. Further, the Board concurred with the AO that Petitioner's larceny, conspiracy to commit larceny, and forgery were not related to his mental health condition or TBI. 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. Based on the same rationale, the Board also concluded Petitioner's narrative reason, separation code, and 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.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

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That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that, for the period ending 4 August 1983, he was discharged with a "General (Under Honorable Conditions) characterization of service. That all other information currently listed on Petitioner's DD Form 214 remains the same.

That no further changes be made to Petitioner's record.

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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

4/14/2026

