



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

■
Docket No. 10039-25
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,
XXX-XX-■■■■■

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

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 (HON).

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 12 May 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 regulations within the Department of the Navy.

b. 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.

c. Petitioner enlisted in the Navy and began a period of active duty on 20 September 2004. After a period of continuous Honorable service, Petitioner immediately reenlisted and commenced a second period of active duty on 11 September 2008.

d. On 12 November 2008, Petitioner received non-judicial punishment (NJP) for wrongful use of a controlled substance.

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e. Unfortunately, the documents pertinent to Petitioner's administrative separation were not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The record shows, on 20 November 2008, Petitioner was separated from the Navy with an "Under Other Than Honorable" (OTH) characterization of service, narrative reason for separation of "Misconduct (Drug Abuse)," reentry code of "RE-4," and his separation code of "HKK," which corresponds to misconduct due to drug abuse. Upon Petitioner's discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that did not annotate his period of continuous Honorable service from 20 September 2004 to 10 September 2008.

f. Petitioner contends the following injustices warranting relief:

(1) He incurred mental health conditions during military service, which may have contributed to the circumstances of his separation from service.

(2) He fully acknowledges responsibility for testing positive for marijuana.

(3) During his deployment, he experienced multiple traumatic and destabilizing events in a short period of time.

(4) The Navy did not offer him any effective treatment with his misdiagnosis which left him isolated and emotionally broken.

(5) At 20 years old and isolated on deployment, he did not have the emotional maturity or mental health support system to process the events he was experiencing. He did not receive mental health counseling or structured support.

(6) His marijuana use was not habitual criminal behavior. It was maladaptive coping mechanism during a period of extreme psychological distress. If he had received proper mental health evaluation and intervention, he firmly believes that his outcome would have been different.

g. As part of the Board's review, a qualified mental health professional reviewed Petitioner's contentions and the available records and provided the Board with enclosure (3). The AO stated in pertinent part:

There is no evidence that the Petitioner suffered from any mental health symptoms/conditions while in service. He submitted evidence of possible diagnoses of depression and anxiety that are temporally remote to service. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and any other mental health condition. 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.

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The AO concluded, "Based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

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

Specifically, as previously discussed, the Board noted Petitioner has a period of Honorable service from 11 September 2004 to 10 September 2008 which is not documented on his DD Form 214. Applicable regulations authorizes the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization except "Honorable." As a result, the Board determined Petitioner's naval record shall be corrected to reflect his continuous Honorable active service.

With regard to Petitioner's request for an upgrade of his discharge character of service, the Board reached the following conclusions and denied his application for relief.

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his drug abuse. The Board noted Petitioner admitted to committing the misconduct that formed the basis of his administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to his OTH discharge and no error, except as noted above, exists with his record.

However, because Petitioner raised the issue of mental health, 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 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.

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, the non-violent nature of Petitioner's misconduct, Petitioner's immaturity at the time of his misconduct, the negative effect

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Petitioner's discharge has had on his life, Petitioner's mental health issues, and the passage of time since his 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 determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also considered the negative effect Petitioner's misconduct had on the good order and discipline of his command. 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, even taking into consideration all the mitigation factors in Petitioner's case, the Board found that his misconduct while on active duty outweighed the mitigation evidence offered. While the Board acknowledged the mental health issues Petitioner is currently enduring, ultimately, the Board concluded an upgrade of Petitioner's discharge characterization of service is not warranted in the interests of justice.

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 Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 20 November 2008, with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "11 September 2004 to 10 September 2008."

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.

6/3/2026

[REDACTED]