



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

[REDACTED]
Docket No: 3552-16

AUG 24 2017

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN, [REDACTED]

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) Chief, Bureau of Medicine and Surgery (BUMED) memo dated 20 Apr 2017

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting that his general (under honorable conditions) characterization of service be upgraded. Enclosures (1) through (4) apply.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 May 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion (AO) provided by the Chief, Bureau of Medicine and Surgery (BUMED), a copy of which is attached as enclosure (4).
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, it is in the interest of justice to waive the statute of limitations and review the application on its merits.
 - c. Petitioner enlisted in the Navy on 27 October 1976.
 - d. On 15 August 1977, petitioner received nonjudicial punishment (NJP) for unauthorized absence totaling 10 days.

e. On 31 January 1978, Petitioner was counseled for his lax application of knowledge in his rating, inconsistent work habits, and not complying with standards of dress and grooming.

f. On 13 October 1978, Petitioner received NJP for absence from appointed place of duty, sleeping on duty, disobeying a lawful order, and disrespectful in language.

g. Petitioner has an entry in his medical records dated 31 October 1978, that he likes his job but is unable to cope with people and that his current mental state is angry and slightly depressed.

h. On 10 January 1979, Petitioner was notified of pending administrative separation action by reason of convenience of the government due to unsatisfactory performance. After he waived his procedural rights, his Commanding Officer recommended a general under honorable conditions characterization of service. The discharge authority approved this recommendation and on 12 January 1979, he was discharged.

i. On 13 January 2015, the Department of Veteran Affairs (DVA) diagnosed Petitioner with Post-Traumatic Stress Disorder (PTSD), major depressive disorder and anxiety disorder. As a result of the forgoing, VA recognized Petitioner's character of service as honorable for VA purposes and awarded Petitioner 70 percent service connected disability.

j. On 6 January 2017, a request to upgrade Petitioner's characterization of service per PTSD guidance was referred to the Chief, Bureau of Medicine and Surgery for review. The Board felt the recommendation from the AO did not support evidence that Petitioner suffered from PTSD as a result of military service that mitigated his misconduct.

k. The AO from BUMED (enclosure (4)), states in part that based on the Petitioner's assertion of being physically and emotionally abused by his peers, while serving aboard the [REDACTED] [REDACTED] caused PTSD which affected his judgment and contributed to his misconduct.

BOARD'S CONCLUSION:

Upon review and consideration of all the evidence of record, and the AO, the Board finds no existence of an error or injustice warranting corrective action. In this regard, the Board concludes that there is no evidence in Petitioner's record that support he suffered from PTSD as a result of serving in the Navy. The Board also noted that the DVA diagnosed PTSD 39 years after Petitioner was discharged from the Navy and was based solely on Petitioner's statement. The Board, voted unanimously against the AO's recommendation, concludes that the AO's recommendation was based primarily on the Petitioner's assertion of being assaulted by his peers upon arriving aboard the [REDACTED] which was not supported by Petitioner's record.

BOARD'S RECOMMENDATION:

That Petitioner's characterization of service remain general (under honorable conditions) and that no action should be taken on this request.

EXECUTIVE DIRECTOR'S CONCLUSION:

Notwithstanding the Board's conclusion, I believe, to the contrary, that the Petitioner's claim has merit, and he has established the existence of probable material error or injustice in his record and that corrective action should be taken as outlined below. I carefully considered Petitioner's assertions and record in light of reference (b). In accordance with reference (b), I give liberal and special consideration to Petitioner's statement, the DVA opinion, and Advisory Opinion. I concur with the AO, who relied on the Petitioner's statement about his harassment and physical abuse and timing of the misconduct to conclude that Petitioner suffered from a mental health condition which led to his various acts of misconduct and poor work performance. I believe that an upgrade to Petitioner's characterization of service from general under honorable conditions to honorable is warranted based on the impact that Petitioner's mental health condition likely had on his misconduct. Petitioner's misconduct was indicative of someone who was under stress and is corroborated by a medical note on 31 October 1978 that stated that he was tired of being pushed around by Petty Officers and Officers. All of Petitioner's misconduct occurred after he reported to the [REDACTED]. I also considered the opinion of the DVA physician who concluded that Petitioner now suffers from PTSD and that "it is more likely than not that his sexual assault and additional physical assaults while in the military, contributed to his current symptomatology of PTSD." As a matter of justice, Petitioner's characterization of service should be upgraded from general (under honorable conditions) to honorable.

In view of the foregoing, I find the existence of an error warranting corrective action.

EXECUTIVE DIRECTOR'S RECOMMENDATION:

That Petitioner's naval record be corrected to show that he was issued an honorable characterization of service on 12 January 1979.

That Petitioner be issued a new DD Form 214 which reflects the honorable characterization of service.

That a copy of this Report of Proceedings be filed in Petitioner's naval record; and

That no further relief be granted.

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 21 April 2016.

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.

[REDACTED]
Recorder

Subj: REVIEW NAVAL RECORD OF

USN, [REDACTED]

5. The foregoing report of the Board is submitted for your review and action.

[REDACTED]
Executive Director

~~Reviewed and Approved the Board Majority Recommendation (deny relief)~~

Reviewed and Disapprove the Board Majority Recommendation – Concur with the BCNR
Executive Director (grant full relief)

[REDACTED]
Signature

9/15/2017
Date