



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

[REDACTED]
Docket No: 7290-16
DEC 19 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
(b) SECDEF Memo of 3 Sep 14 "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD"
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"
(d) PDUSD Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault or Sexual Harassment"

- Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Post-service Mental Health Disorder diagnosis dated 1 Apr 16
(4) Subject's naval record (excerpts)
(5) BUMED memo 5740 Ser M34/17UM34345 dtd 21 Nov 17

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 other than honorable (OTH) characterization of service be changed in light of current guidelines as reflected in references (b) and (c). Enclosures (1) through (5) apply.

2. The Board consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 12 December 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, applicable statutes, regulations, policies, post-service Mental Health diagnosis, and an advisory opinion (AO) provided by Navy Bureau of Medicine and Surgery (BUMED).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

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

- 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 25 April 1989. During the period from 31 May to 20 November 1990, he received four non-judicial punishments (NJP) for seven specifications of unauthorized absence (UA) totaling 34 days, five specifications of being UA from restricted muster, seven specifications of failure to go to appointed place of duty, missing ship's movement, and disrespect. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After he consulted with counsel and waived his procedural rights, his Commanding Officer recommended discharge under other than honorable (OTH) conditions by reason of misconduct due to commission of a serious offense. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct. On 29 December 1990, he was discharged.
- d. Petitioner submitted enclosure (3), dated 1 April 2016, as evidence of a post-service diagnosis of a Mental Health Condition.
- e. On 10 August 2016, Petitioner requested consideration of his case based on an assertion of an undiagnosed and untreated pre-service, in-service, and post-service Mental Health Condition. Based on current BCNR policy and guidance, the Board requested an advisory opinion from BUMED, the office having cognizance over the subject matter, attached as enclosure (5). The advisory opinion has commented to the effect that the request has merit and warrant favorable action. See enclosure (5).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (5), the Board concludes that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in references (b) and (c). Specifically, the Board considered whether his application was the type that was intended to be covered by this policy.

The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" Mental Health Conditions. The memorandum further explains that since Mental Health Conditions were not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that Mental Health Conditions should be considered in mitigation for misconduct committed or were unable to establish a nexus between Mental Health Condition and the misconduct underlying their discharge.

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

In this regard, based upon his record of service, to include a post-service diagnosis of a Mental Health Condition, relief in the form of his characterization of service should be changed to general under honorable conditions. The Board notes Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in his post-service Mental Health diagnosis. The Board was able to reasonably conclude that a Mental Health Condition existed at the time of his misconduct, and subsequently resulted in his other than honorable discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of a Mental Health Conditions should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. With that being determined, the Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been other than honorable, and re-characterization to a general discharge is now more appropriate. In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's Naval record be corrected to show that he was issued a general discharge on 29 December 1990, vice the other than honorable discharge actually issued on that day.

That Petitioner is issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 10 August 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 [REDACTED] USN,
[REDACTED]

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.

[REDACTED]
Executive Director

[REDACTED]