



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

██████████
Docket No: 7309-16
DEC 26 2017

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████ USN,
██████████

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149
(2) Petitioner's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former commissioned officer in the Navy, filed enclosure (1) with this Board requesting that his record be corrected by (1) promoting him to Lieutenant / O3; (2) reinstating his status on active duty; and (3) correcting his fitness report (FITREP) for the reporting period 19 December 2013 to 28 February 2015.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 22 September 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 his application, together with any material submitted in support thereof, relevant portions of his naval record, and applicable statutes, regulations and policies. Enclosures (1) and (2) apply.

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. Petitioner served as an enlisted Sailor in the Navy during the period from 13 July 2000 until he was honorably discharged on 12 May 2011 when he was commissioned an ensign in the Navy. On 5 April 2005, during his enlisted service he appeared before a Medical Board and was diagnosed as bipolar. He was found fit for six months limited duty ashore, with re-evaluation 90 days prior to termination of limited duty. Petitioner's medical record indicates that he stated he did not take prescribed medication because he did not agree with the diagnosis. On 21 November 2006, results of a psychiatric evaluation found no current diagnosis and determined that Petitioner was taking an over-the-counter stimulant, experiencing work stress, and experiencing server marital discord when he was previously diagnosed as bipolar. Another psychiatric evaluation on 22 January 2009 found no current diagnosis, and he was released

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without limitations. Although the details were not available for the Board's review, it appears that Petitioner had two substantiated Family Advocacy Program (FAP) cases during his enlisted period of service. On 22 December 2010, Petitioner was issued a waiver for physical standards for submarine/nuclear field duty due to his history of mood disorder (bipolar disorder).

c. On 13 May 2011, Petitioner was appointed an ensign and promoted to lieutenant (junior grade) on 13 May 2013. ALNAV 070/14 announced that Petitioner was selected for promotion to lieutenant with a projected promotion date of 1 June 2015.

d. On 20 November 2014, a warrant of arrest was issued after Petitioner was accused of assaulting his wife. On 1 December 2014, a warrant of arrest issued after Petitioner was accused of violation of Protective Order (PO). On 27 March 2015, during a civil hearing, Petitioner pled not guilty to both charges but was found guilty of assault of family member and violating PO. On 8 April 2015, Petitioner appealed the findings of guilty. The Commonwealth of [REDACTED] declined to pursue the PO violation and dismissed the charge of assault on a family member. On 17 June 2015, civil authorities issued two year PO to Petitioner, prohibiting contact with his estranged family.

e. Petitioner was issued the contested Regular/Periodic FITREP for the reporting period 19 December 2013 to 28 February 2015. The Reporting Senior RS marked the Promotion Recommendation as "Progressing" and commented that "[Petitioner] is an average performer whose performance and development has been hindered by his personal conduct."

f. On 5Feb15, a Clinical Case Staff Meeting (CCSM) met to discuss a current open FAP incident involving Petitioner. The CCSM closed the FAP incident as unresolved. Because this was Petitioner's third substantiated FAP case, he was declared a treatment failure.

g. On 5 March 2015, Petitioner's Commanding Officer (CO) recommended removal of Nuclear Additional Qualification Designators (ADQ) based on Petitioner being permanently decertified from the Personnel Reliability Program (PRP), pending personal disciplinary actions, and a pattern of misconduct. The Navy Personnel Command (PERS-42) permanently revoked his AQD.

h. On 12 March 2015, the Chief, Navy Personnel Command (CNPC) notified Petitioner of promotion delay to lieutenant due to being charged by civil authorities with a misdemeanor for assault of family member. Petitioner responded that he did not intend to submit statement regarding this action.

i. On 4 June 2015 Petitioner's CO submitted a request to DoDCAF via JPAS recommending permanent removal of Petitioner's security clearance due to his unreliability and security vulnerability.

j. On 18 June 2015 Petitioner's CO forwarded a Report of Misconduct and requested his detachment for cause (DFC), that his promotion to lieutenant be removed, and that he be

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required to show cause. The Report of Misconduct stated, in part, that Petitioner has displayed a systemic pattern of misconduct over his entire military career, unbecoming of a Naval Officer. Specifically, three substantiated domestic violence FAP cases that span over two decades and a history of altercations and adverse incidents adjudicated at nonjudicial punishment (NJP) or dismissed due to procedural or administrative reasons. Petitioner submitted a rebuttal, explaining why he believes that his CO's Report of Misconduct is based on misinformation. On 11 January 2016, the CNPC approved Petitioner's DFC.

k. On 2 February 2016, CNPC (PERS-834) notified Petitioner of administrative separation processing and advised him of his rights. The show cause authority determined that there was sufficient evidence of record to separate Petitioner from the naval service based on misconduct that could have resulted Petitioner being charged with violation of the Uniform Code of Military Justice, Article 128 (assault), a pattern of discreditable involvement with civilian or military authorities as evidenced by three FAP cases, and substandard performance of duty as evidenced by his failure to conform to prescribed standards of military deportment. The recommended characterization of service was General (under honorable conditions). Petitioner submitted a rebuttal in response, stating that the show cause authority willfully disregarded facts in an effort to "back up" the institution of the FAP process as well as his CO, that the show cause authority failed to come to terms with the fallibility of a man-made process and failed to seek reformation, that the show cause authority consists of naval officers who had absolutely no intention of doing what is morally right. Petitioner provided a full statement of facts and circumstances that led to his administrative separation processing. On 31 October 2016, the CNPC recommended to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) to separate Petitioner with a General (under honorable conditions) characterization of service by reason of a pattern of misconduct. On 23 November 2016, the ASN (M&RA) approved the recommendation and directed Petitioner's separation. Petitioner was discharged on 31 January 2017.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board denies Petitioner's request to be promoted, to be reinstated on active duty, and to correct his FITREP. In this regard, the Board found it reasonable (i.e., no error and/or injustice) in Petitioner's loss of clearance, removal/decertification from the Personal Reliability Program, and ultimate discharge based on these actions.

However, the Board unanimously finds the existence of an injustice warranting an alternative, partial relief. In this regard, the Board found the characterization of service and narrative reason for separation as unjust. Specifically, the Board, with consideration of Petitioner's statements, believed that the "substantiated" FAP finding is not appropriately defined as misconduct and there is no evidence of NJP or other disciplinary action in his official military personnel file that justifies an actual finding of misconduct based on objective evidence. The Board found it disturbing that, based on Petitioner's few years of commissioned service, he was not entitled to have his case heard before a Board of Inquiry, yet in determining his characterization of service,

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his prior enlisted time was used against him. This is amplified by the fact that there is no discussion of evidence or even accusations in the discharge recommendation. The recommendation for discharge is apparently based on conduct alleged by his spouse in arrest warrants, and ultimately dismissed. The Board understands that dismissal, and not guilty finding, by State Appeals Court does not disallow the Navy's consideration of Petitioner's conduct; however, the fact that (1) Petitioner's case involves allegations, (2) Petitioner had no process entitlement for FAP or discharge recommendation; and (3) there is no record of meaningful analysis frustrates the Board's sense of justice with respect to a Sailor with 15 years of service, even though he was currently a probationary officer. Because only the characterization of service and the narrative reason for separation shocks the Board's sense of justice, the Board recommends partial relief as follows: Petitioner's characterization of service shall be changed to "Honorable," and the narrative reason for separation, with the corresponding separation designator program (SPD) code shall be changed to "Secretarial authority" and "JFF," respectively.

RECOMMENDATION

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

Petitioner's naval record be corrected by issuing a new Certificate of Release or Discharge From Active Duty (DD Form 214) to show that, on 31 January 2017, the characterization of service was "Honorable," the narrative reason for separation was "Secretarial authority," the SPD code was "JFF," and the separation authority was "MILPERSMAN 1910-164."

A copy of this report of proceedings be filed in Petitioner's naval record.

Upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 12 August 2017.

No further relief be granted.

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.

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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