



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

█  
Docket No: 1070-20  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █  
USN, XXX-XX █

Ref: (a) 10 U.S.C. § 1552  
(b) USD Memo, "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" 25 August 2017  
(c) USD Memo of, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments  
(2) DD Form 214  
(3) NAVPERS 1070/604, Enlisted Qualification History  
(4) NAVPERS 1070/613, Administrative Remarks, 26 Aug 98  
(5) NAVPERS 1070/604, Enlisted Qualification History  
(6) D.B.D. Letter to Office of Veterans Affairs, 27 November 2017  
(7) NDRB Discharge Review Decision Document, Docket No. ND05-01322  
(8) Department of Veterans Affairs Administrative Decision, 11 December 2019  
(9) Mental Health 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 that his characterization of service be upgraded to honorable.
2. The Board reviewed Petitioner's allegations of error and injustice on 10 March 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) and (c).
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or 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.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 24 February 1997. See enclosure (2)

d. On 26 August 1998, Petitioner received nonjudicial punishment (NJP) for underage drinking in violation of Article 92, Uniform Code of Military Justice (UCMJ).<sup>1</sup> See enclosure (3). On the same day, he was counseled for this incident, and warned that further deficiencies in his performance and/or conduct may result in disciplinary action and processing for administrative separation. See enclosure (4).

e. On 22 June 2000, Petitioner received a second NJP for wrongfully using a controlled substance in violation of Article 112a, UCMJ.<sup>2</sup> See enclosure (5).

f. On 28 July 2000, Petitioner was discharged from the Navy under other than honorable (OTH) conditions for misconduct. His separation authority was "MILPERSMAN 1910-146," which reflects separation for misconduct due to drug abuse.<sup>3</sup> See enclosure (2).

g. In 2004, Petitioner was clinically diagnosed with dysthymic disorder, and treated for anxiety and depression by a licensed clinical psychologist. See enclosure (6).

h. On 9 August 2005, Petitioner applied to the Naval Discharge Review Board (NDRB) to upgrade his characterization of service to general (under honorable conditions). With this application, Petitioner stated that he suffered from a serious form of depression, characterized at times by a sense of hopelessness and desperation, throughout this enlistment. He also highlighted his post-service achievements. On 16 March 2006, the NDRB unanimously found no impropriety or inequity in Petitioner's OTH characterization of service.<sup>4</sup> See enclosure (7).

i. By letter dated 11 December 2019, the Department of Veterans Affairs (VA) informed Petitioner that his service in the Navy from 24 February 1997 through 28 July 2000 was considered to be "honorable" for VA purposes. The VA found that Petitioner's drug use appeared to be an isolated incident. See enclosure (8).

j. Petitioner asserts that his discharge was unjust because he suffered from an undiagnosed and untreated mental health condition. Specifically, Petitioner asserts that he suffered from dysthymia, a continuous long-term (chronic) form of depression, while he was in the Navy, and

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<sup>1</sup> Petitioner's records did not include this NJP record. The date of the NJP was taken from enclosure (3), and the offense was presumed by the contents of enclosure (4) and Petitioner's narrative in enclosure (7). The presumption of regularity applies to the administration of this NJP.

<sup>2</sup> Again, Petitioner's records did not include this NJP record. The date of the NJP was taken from enclosure (5) and the offense was presumed by the contents of Petitioner's narrative in enclosure (7). The presumption of regularity applies to the administration of this NJP.

<sup>3</sup> Petitioner's records do not include the documentation for his administrative separation for drug abuse. In the absence of evidence to the contrary, the presumption of regularity applies to establish that this action was proper and that Petitioner was afforded all due process rights.

<sup>4</sup> Based on the NDRB review, the narrative reason for Petitioner's separation was changed from "Misconduct Drug Abuse" to "Misconduct."

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that he was discharged for reasons related to this condition. Petitioner further asserts that his discharge was based upon one isolated incident in 42 months of service, and that the underlying causes of the misconduct have been diagnosed and addressed. See enclosure (1).

k. Petitioner's application and record were reviewed by a qualified mental health professional, who provided an advisory opinion for the Board's consideration. The AO noted Petitioner's post-service diagnosis and return for treatment after a relapse of symptoms. It found that Petitioner's misconduct was likely not a willful failure to meet requirements, given his otherwise good in-service record, and was likely due to the onset of symptoms of an undiagnosed depressive disorder. The AO also found that Petitioner's post-discharge diagnosis of dysthymic disorder, rendered less than four years after his discharge from military service, and the recognition by the VA of his service as honorable, lend credibility to his contention his experience of an undiagnosed mental health condition mitigated his in-service misconduct. See enclosure (9).

#### MAJORITY CONCLUSION:

After careful review and consideration of all of the evidence of record, the Majority of the Board determined that full relief is warranted in the interests of justice.

Because Petitioner based his claim for relief in part upon his diagnosed dysthymic disorder, his application was reviewed in accordance with the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his misconduct. In this regard, the Majority substantially concurred with the AO, finding that Petitioner's undiagnosed dysthymic disorder mitigated the misconduct for which he was separated.

In addition to applying liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his conduct, the Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Majority considered, among other factors, that Petitioner suffered from an undiagnosed and untreated dysthymic disorder during his naval service which mitigated the misconduct for which he was separated; that the VA determined Petitioner's service to be honorable for VA purposes; that Petitioner's drug use appears to be an isolated incident in an otherwise meritorious enlistment, as reflected by the several commendations received by Petitioner; Petitioner's impressive post-service record of accomplishments, to include his academic achievements, professional accomplishments, and volunteer activities; the relatively minor nature of Petitioner's misconduct and the fact that he most likely would not be separated under OTH conditions for similar misconduct today; that Petitioner has sought and received mental health treatment to rehabilitate himself; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon this review, the Majority determined that the interests of justice warrant upgrading Petitioner's characterization of service to fully honorable under the totality of the circumstances. The mitigating effect of Petitioner's mental health condition upon his misconduct, combined with the relatively minor nature of the misconduct for which Petitioner was discharged, his otherwise meritorious naval service and his impressive post-service accomplishments, convinced

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the Majority that no further purpose is served by characterizing his service as anything but honorable.

In addition to determining that Petitioner's characterization of service should be upgraded to fully honorable, the Majority also determined that Petitioner's narrative reason for separation, along with his corresponding separation authority and separation code, should be changed to reflect "Secretarial Authority," and his reentry code changed accordingly, to prevent any future negative implications from his discharge.

#### MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his separation code was "JFF"; and that his reentry code was "RE-1J."

That Petitioner be issued an Honorable Discharge Certificate.

That no further corrective action should be taken.

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

#### MINORITY CONCLUSION:

The Minority of the Board concurred with the Majority conclusions that Petitioner's mental health condition mitigated the misconduct for which he was separated, and that relief is warranted in the interests of justice. However, the Minority found Petitioner's misconduct to be more serious than did the Majority. Accordingly, the Minority found that the mitigating circumstances did not so significantly outweigh the misconduct for which Petitioner was separated to warrant an upgrade of Petitioner's characterization of service to fully honorable. Rather, the Minority determined that the interests of justice warranted an upgrade of Petitioner's characterization of service to general (under honorable conditions) under the totality of the circumstances.

Although not finding an upgrade of Petitioner's characterization of service to fully honorable to be warranted under the totality of the circumstances, the Minority concurred with the Majority determination that Petitioner's narrative reason for separation, separation code, separation authority and reentry code should be changed in the interests of justice to minimize the potential for future negative implications from Petitioner's discharge.

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MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his separation code was "JFF"; and that his reentry code was "RE-1J."

That no further corrective action be taken.

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 titled matter.

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

3/29/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

Reviewed and Approved Board MAJORITY Recommendation (Grant Relief)

[REDACTED]

[REDACTED]

4/29/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]