



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

█
Docket No: 3338-20
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) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014
 - (c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016
 - (d) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and 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," of 25 August 2017
 - (e) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018
 - (f) MILPERSMAN 1910-704, "Determining Separation Authority"

- Encl:
- (1) DD Form 149 w/attachments
 - (2) DD Form 214
 - (3) NAVPERS 1626/7, Report and Disposition of Offense(s) of 14 Jul 10
 - (4) NAVPERS 1616/26, Evaluation Report & Counseling Record (E1-E6) of 6 Oct 10
 - (5) NAVPERS 1910/31, Administrative Separation Processing Notice – Administrative Board Procedure of 21 Jul 10
 - (6) Board Findings/Recommendations Worksheet of 13 Aug 10
 - (7) Naval Technical Training Center CO Memo Ser N00J/217, subj: [Petitioner], Recommendation for Administrative Separation of 17 Sep 10
 - (8) CNP Memo Ser 00/011, subj: Administrative Separation ICO [Petitioner] of 7 Feb 11
 - (9) VA Readjustment Counseling Service Letter of 6 Mar 17
 - (10) NDRB Decisional Document, Docket No. ND17-01008 of 12 Dec 17
 - (11) BCNR Advisory Opinion of 15 Mar 21

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 and that the narrative reason for his

separation be changed.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 2 April 2021 and, pursuant to its regulations, determined that no corrective action was warranted. 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) – (e).

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.

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

c. Petitioner enlisted in the Navy and began a period of active duty service on 25 September 2006. See enclosure (2).

d. On 14 July 2010, Petitioner received non-judicial punishment (NJP) for the wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice.² See enclosure (3).

e. As a result of his NJP, Petitioner was reduced in grade to E-3 and dis-enrolled from Yeoman "A" School. See enclosure (4).

f. On 21 July 2011, Petitioner was notified that he was being processed for an administrative discharge by reason of misconduct due to drug abuse. Petitioner elected to exercise his right to an administrative separation board (ADB). See enclosure (5).

g. On 13 August 2010, the ADB unanimously determined that the preponderance of the evidence supported the allegation of misconduct due to drug abuse against Petitioner, but recommended by a vote of 2-1 that he be retained in the Navy despite his misconduct.³ See enclosure (6).

h. By memorandum dated 17 September 2010, Petitioner's commanding officer (CO) recommended, contrary to the ADB recommendation, that Petitioner be separated for misconduct due to drug abuse with a general (under honorable conditions) characterization of service. In this recommendation, the CO "emphatically" disagreed with the ADB recommendation for retention,

¹ Petitioner requested that his narrative reason for separation be changed to "Good Conditions."

² Petitioner tested positive for tetrahydrocannabinol (THC) on 23 June 2010 with a concentration of 139. On 6 July 2010, he tested positive for THC again with a concentration of 35. This diminished concentration was consistent with a single use of THC being metabolized in the body.

³ The dissenting ADB member provided a minority report, explaining that she recommends that Petitioner be separated with a general (under honorable conditions) characterization of service because the Navy's policy is "zero tolerance" for illegal drug use, and Petitioner had enough experience in the Navy to know of that policy and the consequences of his decision to violate it.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX [REDACTED]

as Petitioner had deliberately disregarded the Navy's "Zero Tolerance Policy" on illegal drug use. See enclosure (7).

i. By memorandum dated 7 February 2011, the Chief of Naval Personnel concurred with the CO's recommendation, and recommended that the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) approve Petitioner's separation with a general (under honorable conditions) characterization of service. See enclosure (8).

j. On 28 February 2011, the ASN(M&RA) approved Petitioner's separation from the Navy with a general (under honorable conditions) characterization of service.⁴ See enclosure (8).

k. On 18 March 2011, Petitioner was discharged from the from the Navy for misconduct due to drug abuse with a general (under honorable conditions) characterization of service. See enclosure (2).

l. Petitioner began seeking mental health treatment for "anxiety and mood swings" from a Department of Veterans Affairs (VA) provider in October 2015. By letter dated 6 March 2017, this provider reported that Petitioner meets the criteria for service-related post-traumatic stress disorder (PTSD). The traumatic events reported to trigger this service-connected PTSD condition included "[h]arassment and hazing by superiors on-board ship as [a] junior seaman" and the termination of Petitioner's navy career with a general (under honorable conditions) discharge. See enclosure (9).

m. Petitioner contends that he received a service-connected disability rating from the VA for PTSD in May 2015, but provided no evidence to support this assertion. See enclosure (1).

n. On 12 December 2017, the Naval Discharge Review Board (NDRB) reviewed Petitioner's discharge and unanimously determined that no change was warranted. In his application to the NDRB, Petitioner asserted that marital stress caused him to make a poor decision, that this was an isolated incident in an otherwise honorable tour, and that his post-service conduct and contributions to society warrant consideration. After a thorough review of the available evidence, the NDRB determined that Petitioner's discharge was proper and equitable at the time of discharge, and that therefore no change was warranted. See enclosure (10).

o. Petitioner contends that the characterization of his discharge was unjust, inequitable and disproportionate to his minor infraction, and that his single, minor infraction was caused by his PTSD condition. He also asserts that his service was meritorious and that his above-average performance resulted in early recognition and advancement. This, in turn, caused resentment among his peers that manifested itself with harassment and hazing onboard the ship, while at the same time Petitioner began to experience personal issues. Petitioner also contends that a six-month deployment in 2009-2010 was particularly difficult for him because he was struggling emotionally and psychologically with suspicions of his wife's infidelity and because his ship was

⁴ Per reference (f), the separation authority when an ADB recommends retention after substantiating the alleged basis for separation is the Secretary of the Navy. This authority is delegated to the ASN (M&RA).

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX [REDACTED]

attacked by [REDACTED]⁵ After this experience, he contends that he returned home where he had to face his family problems and the effects of his PTSD, and that it was then that he made the wrong decision to self-medicate with marijuana.

p. Petitioner's application and records were reviewed by a qualified mental health professional who provided an advisory opinion (AO) for the Board's consideration. The AO noted that Petitioner's service record demonstrated consistently positive performance evaluations until after his single incident of misconduct, as well as the 6 May 2017 letter from the VA mental health provider. The AO concluded that Petitioner's mental health treatment within four years of his discharge, along with the letter from the VA mental health provider which stated that Petitioner meets the criteria for service-related PTSD, lent credibility to Petitioner's contention that his mental health condition adversely affected his ability to deal with the difficult personal issues that he was dealing with at the time. See enclosure (11).

BOARD CONCLUSION:

After careful review and consideration of all of the evidence of record, the Board determined that relief was not warranted under the totality of the circumstances.

Because he based his claim for relief in whole or in part upon his PTSD condition, the Board reviewed Petitioner's application in accordance with the guidance of references (b) – (d). Accordingly, the Board applied liberal consideration to Petitioner's claim of PTSD, and the effect that it may have had upon his conduct. Even applying liberal consideration, however, the Board could find no nexus between Petitioner's claimed PTSD and/or PTSD-related symptoms, and Petitioner's misconduct. Although Petitioner claimed to have been awarded a 50 percent service-connected disability rating from the VA for PTSD, he provided no evidence of this determination. Absent such evidence, the Board had difficulty identifying the service-connected traumatic experience which triggered his PTSD condition, as Petitioner made only vague references to harassment and hazing experienced at the hands of jealous peers and superiors, and to the fact that he was onboard a ship that engaged Somali pirates. Further, in stating that Petitioner meets the criteria for service-connected PTSD, the VA mental health provider who provided enclosure (9) listed his actual discharge and his diminished self-worth and hope for the future, which occurred after his misconduct, among the triggering events that resulted in this condition. In this regard, the Board is cognizant that PTSD can be triggered by many different types of traumatic events and does not question Petitioner's current PTSD diagnosis. It also considered that evidence of PTSD may be established by the Petitioner's statement alone in accordance with references (b) and (d). However, the Board found that Petitioner simply failed to describe any potential triggering event in sufficient detail to convince the Board that his PTSD condition was related to his naval service. Likewise, Petitioner did not adequately describe any potential in-service PTSD-symptoms, stating only that he had difficulty dealing with his personal family issues at the time. Accordingly, even applying liberal consideration, the Board found insufficient evidence that Petitioner developed PTSD as a result of his naval service, or that his

⁵ Petitioner does not contend that he engaged in active combat operations against the [REDACTED] but that he was present and exposed to these individuals when they were captured.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX-[REDACTED]

PTSD condition mitigated the misconduct for which he was separated. Although the Board found insufficient evidence to establish that Petitioner developed PTSD as a result of his military service or that his mental health condition mitigated his misconduct, it considered Petitioner's current PTSD diagnosis as a potentially mitigating factor under the totality of the circumstances as discussed below.

In addition to applying liberal consideration to Petitioner's claim of PTSD and the effect that it may have had upon his conduct in accordance with references (b) – (d), the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, Petitioner's otherwise meritorious service, as evidenced by his receipt of two Navy-Marine Corps Achievement Medals (NMCAM), a Good Conduct Medal (GCM), and favorable performance reviews; that Petitioner participated in two sea deployments, including one conducting counter-piracy operations in east Africa; that Petitioner completed his first full enlistment honorably; that Petitioner reportedly attended counseling following his drug use and continued to do so even after his discharge from the Navy; that Petitioner's ADB recommended that he be retained in the Navy despite the misconduct for which he was ultimately separated; that Petitioner was dealing with difficult emotional issues related to the infidelity of his spouse at the time of his misconduct; that Petitioner has been diagnosed with PTSD, and that a VA mental health provider has attributed this condition to Petitioner's naval service; the relatively minor nature of Petitioner's misconduct; Petitioner's post-service educational accomplishments and volunteer activities; that Petitioner has found reportedly himself homeless and unemployed at times since his discharge; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Even considering these potentially mitigating factors, the Board determined that an upgrade to Petitioner's characterization of service was not warranted in the interests of justice under the totality of the circumstances. In this regard, the Board found that a general (under honorable conditions) was appropriate under the circumstances. While the Board agrees that Petitioner's misconduct was relatively minor and isolated, his characterization of service is not adverse and is appropriate under the circumstances. Further, Petitioner's characterization of service has not deprived Petitioner of any benefits, as he stated that he has used his GI Bill benefits and has received treatment from the VA. A fully honorable discharge is generally not warranted when a Sailor is involuntarily discharged due to their misconduct, and the Board did not find Petitioner's record to be otherwise so meritorious as to warrant an upgrade under the circumstances.

BOARD RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on Petitioner's naval record.

EXECUTIVE DIRECTOR CONCLUSION:

I disagree with the conclusion and recommendation of the Board members, and believe that Petitioner's application warrants relief in the interests of justice based upon the guidance of reference (e). Petitioner had one incident of minor misconduct in over four years of service. Apart from this one instance of misconduct, his service was otherwise meritorious as evidenced

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX-[REDACTED]

by his receipt of two NMCAMs, a GCM, and numerous commendations from his superiors. At the time of his misconduct, Petitioner was dealing with the emotional distress related to his spouse's infidelity, which was later confirmed when he was determined not to be the father of a child that he came home to after a deployment. He completed two sea deployments, including one that involved in counter-piracy operations. Petitioner's conduct trait average at the time of his discharge was calculated as 3.16, while an average of only 2.5 was required at the time for an honorable discharge.⁶ The ADB which considered Petitioner's case recommended that he be retained in the naval service despite his misconduct, and only a very small percentage of such cases are referred to the ASN (M&RA) to override the recommendation of the ADB. A VA mental health provider has diagnosed Petitioner with PTSD and believes his condition to be related to his naval service. Finally, Petitioner provided evidence of his post-service educational pursuits and volunteer activities within his community. As stated in reference (e), "[a]n honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct." Given the totality of the circumstances in Petitioner's case, I believe that relief is warranted in the interests of justice in accordance with reference (e).

EXECUTIVE DIRECTOR RECOMMENDATION:

In view of the above, I recommend that the following corrections be made to 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"; and that his separation code was "JFF."

That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's naval record.

That a copy of this record 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.

⁶ The 3.16 conduct trait average cited here was calculated by the case examiner. The NDRB summary calculations, however, cited Petitioner's conduct trait average as 2.6.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX [REDACTED]

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

3/14/2021

[REDACTED]

Executive Director

ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:

Reviewed and Approved Executive Director Recommendation (Grant Relief)

Reviewed and Approved Board Recommendation (Deny Relief)

5/22/2021

JUN 08 2021

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Acting