



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

[REDACTED]
Docket No: 8053-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
XXX XX [REDACTED] USN

Ref: (a) Title 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 Post Traumatic Stress Disorder" (Hagel Memo)
(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) USD 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" (Kurta Memo)
(e) USECDEF Memo of 25 Jul 2018 "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations" (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments

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 naval record be corrected to reflect an upgrade to his characterization of service to Honorable.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 July 2021 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, relevant portions of naval records, and applicable statutes, regulations and policies, to include references (b through e).

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.

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b. Petitioner entered active duty with the Navy in June 1992. He served as an Aviation Boatswain Mate Equipment onboard [REDACTED] upon his completion of his initial training pipeline. Petitioner alleges he witnessed an aircraft mishap in July 1993 where the pilot was killed in a gruesome manner. He subsequently wrongfully used a controlled substance and was punished with non-judicial punishment (wrongful use of LSD, \$466 X 2 months, 45 days restriction/extra duty, and reduction in rate) on 13 May 1994. As a result of his drug abuse, Petitioner was administratively separated from the Navy on 22 June 1994 with an Other than Honorable characterization of service.

c. In September 2009, Petitioner applied to this Board requesting to have his discharge and reentry code reviewed. At that time, he denied taking any controlled substances and argued he was coerced into admitting guilt. His application was denied on 23 July 2010. Subsequently, Petitioner was diagnosed with Post-Traumatic Stress Disorder (PTSD) by the Department of Veterans Affairs on 9 October 2020 based on his assertions of witnessing the July 1993 aircraft mishap.

d. A favorable advisory opinion was issued in Petitioner's case on 22 June 2021 that states "there is sufficient objective evidence Petitioner experienced a significant traumatic episode during his military service, exhibited behaviors associated with PTSD during his military service, and that his misconduct may be mitigated by his PTSD."

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board substantially concurred with the advisory opinion issued in Petitioner's case. Specifically, the Board determined that the preponderance of the evidence supports upgrading Petitioner's characterization of service to General (Under Honorable Conditions) after applying liberal consideration to the facts of his case and mitigating his misconduct. Despite concluding Petitioner deserved some form of mitigation as a result of his PTSD condition, the Board determined his misconduct was too serious to merit an upgrade to Honorable from Other than Honorable. In the Board's opinion, Petitioner was still mentally responsible for extremely serious misconduct and his conduct could not be entirely mitigated due to the seriousness of his misconduct that qualified for a punitive discharge under the Uniform Code of Military Justice. Based on these factors, the Board determined that partial relief was appropriate in Petitioner's case.

RECOMMENDATION

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

Petitioner's naval record be corrected by upgrading Petitioner's characterization of service from Other than Honorable to General (Under Honorable Conditions). Petitioner will be issued a new DD Form 214 consistent with this change.

No further changes to Petitioner's naval records.

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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.

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.

7/19/2021

[REDACTED]

Deputy Director
Signed by: [REDACTED]