



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

██████████  
Docket No: 8398-20  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
██████████

- 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 PTSD," 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," 24 February 2016  
(d) 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  
(e) 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) ██████████ Narrative Summary, 27 May 87  
(4) NRMC/CP 6320/70, Interim Report of Inpatient Disposition, 26 May 87  
(5) NAVMC 118(12), Offenses and Punishments  
(6) MAVMED 6100/1, Medical Board Report, 6 Jun 88  
(7) ██████████ ██████████ CO Memo, subj: Notification of Separation Proceedings, 28 April 1988  
(8) Petitioner's Memo, Notice of Separation Proceedings (First Endorsement of Enclosure (7)), 28 April 1988  
(9) ██████████ CG Memo, subj: Separation Proceedings of [Petitioner], 24 May 1988  
(10) Naval Medical Command CO Memo, subj: Medical Board in the case of [Petitioner], 11 July 1988  
(11) NDRB Decisional Document, Docket No. ██████████, 29 October 1991  
(12) Department of Veterans Affairs Letter, dtd 23 January 2020  
(13) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 25 June 2021

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
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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 or injustice on 28 July 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) – (e).
3. The Board, having reviewed all of 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 (DON).
  - b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review Petitioner's application on its merits.
  - c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 4 February 1985. See enclosure (2).
  - d. On 8 May 1987, Petitioner sustained a head injury when he was struck in the forehead during an altercation. Petitioner sought medical treatment, received sutures, and was released. Over the following week, Petitioner experienced varying lingering symptoms and returned for further medical treatment. He received a neurology evaluation, and was subsequently admitted for inpatient observation from 14 May 1987 to 18 May 1987. See enclosure (3).
  - e. On 26 May 1987 Petitioner was diagnosed with post traumatic concussive syndrome. See enclosure (4).
  - f. On 25 November 1987, Petitioner received nonjudicial punishment (NJP) for an unauthorized absence in violation of Article 86, Uniform Code of Military Justice (UCMJ).<sup>1</sup> See enclosure (5).
  - g. On January 1988, Petitioner suffered another head injury in a motor vehicle accident. This injury reportedly caused him daily pain. See enclosure (6).
  - h. On 25 February 1988, Petitioner received a second NJP for bringing beer to another Marine on restriction in violation of Article 92, UCMJ. See enclosure (5).
  - i. On 6 June 1988, a medical board found Petitioner unable to perform his duties and recommended that his case be referred to the Physical Evaluation Board. See enclosure (6).

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<sup>1</sup> Petitioner's was UA for approximately 2-1/2 hours.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

j. On 4 April 1988, Petitioner received his third NJP for wrongfully using cocaine in violation of Article 112a, UCMJ; and for breaking restriction and altering the birthdate on his identification card, both in violation of Article 134, UCMJ. See enclosure (5).

k. By memorandum dated 28 April 1988, Petitioner was notified that he was being recommended for administrative separation for misconduct due to a pattern of misconduct and drug abuse. See enclosure (7).

l. On 28 April 1988, Petitioner waived his right to consult with counsel and to request an administrative discharge board. See enclosure (8).

m. By memorandum dated 24 May 1988, the separation authority directed that Petitioner be discharged under other than honorable (OTH) conditions for misconduct due to a pattern of misconduct and drug abuse. See enclosure (9).

n. On 21 June 1988, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to drug abuse. See enclosure (2).

o. By memorandum dated 11 July 1988, the Commander, Naval Medical Command, indicated to Headquarters, Marine Corps, that Petitioner's medical board report (Enclosure (6)) was received without a Line of Duty (LOD) investigation or the commanding officer's determination of LOD, as required by regulations. See enclosure (10).

p. On 29 October 1991, the Naval Discharge Review Board (NDRB) discerned no impropriety or inequity in Petitioner's discharge, and denied him relief. Petitioner had contended that his discharge was unfair because of his high proficiency and conduct marks as well as the overall quality of his service; his head injury impaired his ability to fully serve; there was no real effort to rehabilitate in light of his overall quality of service; he was innocent of the drug abuse charge and his command did not want him to get a medical discharge; and he was close to completing his term of service. Petitioner also contended that relief was warranted due to his good post-service conduct. See enclosure (11).

q. On 23 January 2020, the Department of Veterans Affairs (VA) awarded Petitioner service connection for treatment purposes only for migraine headaches and post-traumatic stress disorder (PTSD). See enclosure (12).

r. Petitioner contends that his discharge was not properly administered. He asserts that the evidence supports that UCMJ, DON, and Department of Defense protocols were not followed in the handing of his separation, and that discrepancies in the NDRB's findings and decisions were inconsistent with the discharge narrative.<sup>2</sup> He also contends that the records that were given to him at the time of the NDRB were not complete. See enclosure (1).

s. 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

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<sup>2</sup> It is not clear to what inconsistencies Petitioner was referring.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
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noted that, given Petitioner's pre-service substance abuse, it is not unusual for service members to revert to back to previous maladaptive coping behaviors in the face of psychological distress, or in this case, chronic pain from his pervasive and recurrent migraine headaches. The AO concluded that the preponderance of the available objective evidence supports Petitioner's contention that he incurred a significant head injury during his military service, with chronic residual psychological and neurological symptoms, and that his misconduct may be mitigated by his mental health condition. See enclosure (13).

#### MAJORITY CONCLUSION:

Upon 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 PTSD condition, his application was reviewed in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner's PTSD condition, and the effect that it may have had upon his misconduct. The Majority also gave special consideration to the fact that the VA found Petitioner's PTSD condition to be service connected for treatment purposes. Applying liberal and special consideration, the Majority substantially concurred with the findings of the AO that Petitioner developed psychological and neurological symptoms as a result of his multiple head injuries while in the Marine Corps, and that these symptoms may have mitigated the conduct for which Petitioner was separation.

In addition to applying liberal consideration to Petitioner's mental health condition and the effect that it may have had upon his conduct in accordance with references (b) – (d), the Majority 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 Majority considered, among other factors, that Petitioner developed PTSD and endured the significant physical pain of migraine headaches as a result of injuries suffered while in the Marine Corps, which mitigated the misconduct for which he was separated; Petitioner's well documented medical record verifying his two head injuries; that a medical board recommended that Petitioner be referred to the Physical Evaluation Board; Petitioner's relatively high conduct and performance marks while in the Marine Corps, which exceeded the minimal standard for an honorable characterization of service; the non-violent and relatively minor nature of Petitioner's misconduct; 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 Petitioner's characterization of service should be upgraded to fully honorable in the interests of justice. The significant mitigating effect of Petitioner's mental health condition upon his relatively minor misconduct, combined with the fact that he has suffered the effects of his in-service injuries for many years, convinced the Majority that such relief is warranted given the totality of the circumstances.

In addition to determining that Petitioner's characterization of service should be upgraded to fully honorable, the Majority found that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to reflect "Secretarial Authority" to minimize

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

any future negative inferences from his discharge. The Majority also determined that Petitioner's reentry code should be changed from "RE-4B" to "RE-4," for the same reason.<sup>3</sup>

**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 "MARCORSEPMAN 6214"; that his separation code was "JFF1"; and that his reentry code was "RE-4."

That Petitioner be issued an Honorable Discharge Certificate.

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

That no further corrective action should be taken.

**MINORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Minority of the Board determined that partial relief is warranted in the interests of justice.

The Minority also applied liberal consideration to Petitioner's PTSD condition and the effect that it may have had upon his misconduct in accordance with references (b) – (d), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). Based upon this review, the Minority largely concurred with the Majority conclusions regarding the mitigating effect of Petitioner's mental health condition upon his misconduct, and that relief is warranted in the interests of justice. The Minority, however, did not find the mitigating circumstances so far outweighed Petitioner's misconduct as to warrant the extraordinary relief recommended by the Majority. In reaching this conclusion, the Minority noted that not all of the misconduct for which Petitioner was discharged was of a type that would likely be mitigated by Petitioner's mental health condition. Accordingly, while the Minority agrees with the Majority conclusion that Petitioner's characterization of service should be upgraded in the interests of justice, it determined that the interests of justice are best served by upgrading Petitioner's characterization of service to general (under honorable conditions).

The Minority concurred with the Majority that Petitioner's narrative reason for separation, separation code, separation authority, and reentry code should also be changed in the interests of justice to minimize future negative inferences from Petitioner's discharge.

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<sup>3</sup> The reentry code "RE-4B" reflects the drug use code.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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 "MARCORSEPMAN 6214"; that his separation code was "JFF1"; and that his reentry code was "RE-4."

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

That no further corrective action be taken.

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.

08/23/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

**MAJORITY Recommendation Approved (Full Relief)**

~~MINORITY Recommendation Approve (Partial Relief)~~

~~Board Recommendation Disapprove (Deny Relief — Relief is not warranted in the interests of justice given the totality of the circumstances)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

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