



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

[REDACTED]
Docket No: 8641-20
Ref: Signature date

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

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

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, "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 1070/67, Court Memorandum, 25 June 2003
(4) Transient Personnel Unit CO Memo Ser N11/2291, subj: Administrative Separation ICO [Petitioner], 23 December 2003
(5) Defense Counsel Memo, subj: Letter of Deficiency ICO [Petitioner], 4 November 2003
(6) Recorder's Memo, subj: Counsel for Respondent's Letter of Deficiency dtd 4 November 2003, 5 November 2003
(7) Department of Veterans Affairs Rating Decision, 2 November 2013
(8) Department of Veterans Affairs, VA [REDACTED] Health Care System Letter, Re: [Petitioner], dtd 26 June 2018
(9) BCNR Advisory Opinion, 5 May 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.

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.

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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.

b. Petitioner enlisted in the Navy and began a period of active duty service on 23 February 2000. See enclosure (2).

c. On 25 June 2003, Petitioner received nonjudicial punishment (NJP) for the wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ).¹ See enclosure (3).

d. On 29 October 2003, an administrative separation board unanimously found that the preponderance of the evidence supported the allegation that Petitioner committed misconduct due to drug abuse, and recommended that Petitioner be involuntarily separated from the Navy. By a vote of 2-1, the administrative separation board recommended that Petitioner be separated with a general (under honorable conditions) characterization of service.² See enclosure (4).

e. By memorandum dated 4 November 2003, Petitioner's defense counsel submitted a letter of deficiency regarding the administrative separation board proceedings, and requested that the board's recommendation be reversed or, alternatively, that its recommendation regarding Petitioner's characterization of service be upgraded to honorable. Petitioner's defense counsel asserted that the findings and recommendations were made despite there being no evidence of the chain of custody of Petitioner's urine sample that tested positive for the use of cocaine. He asserted that the chain of custody and laboratory results were critical to establishing the government's burden of proof. The defense counsel also requested that the separation authority consider that discovery requests made by Petitioner were denied by the government; there were some procedural errors at the board, to include the fact that the senior member allowed the board to continue over Petitioner's objection that discovery was not provided; that the finding of misconduct was not supported by the evidence; and that the recommendation for a general (under honorable conditions) characterization of service was not warranted by the circumstances. See enclosure (5).

f. By memorandum dated 5 November 2003, the Recorder for Petitioner's administrative separation board refused to endorse the letter of deficiency submitted by Petitioner's defense counsel. The Recorder asserted that Petitioner's defense counsel conflated the government's obligations at an administrative separation board with those at a court-martial. The Recorder also explained why unredacted drug packages are not routinely provided by the drug lab for

¹ Evidence in the record reflects that Petitioner tested positive for the use of cocaine.

² The minority member of the administrative separation board recommended that Petitioner be separated under other than honorable conditions.

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administrative separations, and refuted the argument of the defense counsel that he was hampered by discovery issues. Finally, the Recorder noted that Petitioner's own unsworn statement appeared to be an admission of misconduct, which made the administrative separation board members find it more likely that he was "out partying in a foreign port than the drug lab making a mistake." See enclosure (6).

g. On 17 December 2003, Petitioner was discharged from the Navy for misconduct with a general (under honorable conditions) characterization of service. See enclosure (2).

h. On 2 November 2013, the Department of Veterans Affairs (VA) awarded Petitioner a 100 percent service connected disability rating for post-traumatic stress disorder (PTSD) with depressive disorder and alcohol abuse, effective 15 January 2013. His rating decision noted that Petitioner was a witness to the suicide of one of his peers while in the Navy. See enclosure (7).

i. By letter dated 26 June 2018, Petitioner's VA-affiliated mental health provider confirmed that he was being treated for chronic PTSD and depression, and that it is more likely than not that his PTSD is directly related to his service in the military. See enclosure (8).

j. Petitioner contends that in April 2003, while deployed onboard the ██████████ in support of Operation Iraqi Freedom, he discovered his bunkmate dead by suicide in their private bathroom. He was a stretcher-bearer for the removal of his bunkmate's body from his quarters and was responsible for transporting the body to a helicopter. Petitioner also contends that he received good performance reviews prior to his NJP. He acknowledged that he was heavily intoxicated on the night that he was tested for the use of drugs, and that "anything was possible regarding the drugs in [his] system as it's usually a blur, there was mention that maybe the locals put [the drugs] in [his] drink." Since his discharge, Petitioner reportedly was formally diagnosed with service-connected PTSD on 30 October 2011, and later determined by the VA to be 100 percent disabled with service-connected PTSD with depressive disorder and alcohol abuse. He contends that his mental health condition has precluded him from maintaining regular employment. He also contends that he has come to control his alcohol abuse with the help of his family, and that he has recently volunteered with the Wounded Warriors Project and the Iraq and Afghanistan Veterans of America. See enclosure (1).

k. 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 record reflects no conduct deficiencies until approximately one month after Petitioner discovered his bunkmate's body. It described his positive drug test as evidence of a behavioral change, which may have indicated a mental health condition. The AO also noted that one of the witnesses at Petitioner's administrative separation board testified that he "was shocked when [he] heard the [Petitioner] had popped positive for drugs. It just wasn't in his character." Finally, Petitioner's diagnosis of alcohol abuse lends credibility to his contention that he was consuming excessive amounts of alcohol, as a coping mechanism, since he continued to do so after his discharge until entering treatment and identifying his mental health condition. The AO concluded that there is sufficient evidence Petitioner exhibited behaviors associated with PTSD during his military service and that his misconduct may be mitigated by his PTSD. See enclosure (9).

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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 upon his undiagnosed PTSD condition, the Majority reviewed his application in accordance with the guidance of references (b) – (d). 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 sufficient evidence to conclude that Petitioner developed PTSD during his military service, and that this condition may have mitigated the misconduct for which he was separated. Specifically, the Majority noted that Petitioner had demonstrated no disciplinary issues prior to the traumatic incident of discovering the dead body of his bunkmate, and then shortly thereafter tested positive for the use of drugs associated with an admitted overconsumption of alcohol.

In addition to applying liberal consideration to Petitioner’s PTSD condition and the effect that it may have had upon his misconduct 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, the mitigating effect of Petitioner’s PTSD condition upon the misconduct for which he was separated, as discussed above; that Petitioner developed PTSD as a result of his experience in the Navy, and continued to suffer its effects long after his discharge; Petitioner’s contention that he has managed to control his alcohol abuse with the help of his family and is receiving treatment for his PTSD and depression; Petitioner’s contention that he has engaged in post-service volunteer work with Veterans service organizations; that Petitioner’s record reflects only a single, isolated incident of misconduct; the 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 relief is warranted in the interests of justice. The misconduct for which Petitioner was discharged was already extremely minor and appears to have been an isolated incident. Taking into consideration the mitigating effect of Petitioner’s PTSD condition upon this minor misconduct, the Majority could find no viable reason to continue characterizing Petitioner’s service as anything but honorable.

Although not specifically requested by Petitioner, the Majority also determined that Petitioner’s narrative reason for separation and corresponding entries on his DD Form 214 should be changed to reflect “Secretarial Authority” to minimize any future negative inferences 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:

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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 a copy of this record 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 found insufficient evidence of any error or injustice warranting relief.

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). In this regard, the Minority agreed with the Majority that there is sufficient evidence that Petitioner developed PTSD as a result of his experience in the Navy and that this condition may have mitigated his misconduct. Even applying liberal consideration, however, the Minority did not believe that relief was warranted given the totality of the circumstances. In reaching this conclusion, the Minority noted that a general (under honorable conditions) characterization of service is not considered to be adverse and does not deprive Petitioner of most of the benefits to which he otherwise would be entitled. The Minority also noted that Petitioner was, in fact, discharged for misconduct, and that it would be inequitable to characterize Petitioner’s service in the same manner as that of the thousands of other sailors who complete their service obligations without such disciplinary issues. Accordingly, the Minority determined that relief is not warranted given the totality of the circumstances.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on 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.

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

8/30/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief – Upgrade to Honorable; Change to “Secretarial Authority”)

~~MINORITY Recommendation Approve (Deny Relief)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]