



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

██████████
Docket No: 0077-21
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MEMBER ██████████ 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 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 w/attachment
(2) DD Form 214 (19860809 – 20060113)
(3) NAVPERS 1070/607, Court Memorandum, 22 Apr 03
(4) Navy and Marine Corps Appellate Leave Activity, Special Court-Martial Supplemental Order No. ██████████, 10 Jan 06
(5) NDRB Discharge Review Decisional Document, Docket No. ND10-01097, 22 July 2011
(6) Department of Veterans Affairs Rating Decision, 31 January 2013
(7) Department of Veterans Affairs Rating Decision, 18 November 2015
(8) Department of Veterans Affairs Rating Decision, 19 July 2017
(9) BCNR Memo Docket No. 7407-15, subj: Review of Naval Record of [Petitioner], 6 December 2016
(10) DD Form 214 (Current)
(11) BCNR Advisory Opinion, 15 May 2021

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 or, in the alternative, to general (under honorable conditions).

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

2. The Board reviewed Petitioner's allegation of error or injustice on 9 July 2021 and, pursuant to its regulations, determined the corrective action indicated below should be taken on Petitioner's naval record. 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 regulation within the Department of the Navy.

b. Petitioner enlisted in the Navy and began a period of active duty service on 9 June 1986. See enclosure (2).

c. On 2 May 2002, Petitioner was convicted by a special court-martial (SPCM) for wrongful use of cocaine in violation of Article 112a, Uniform Code of Military Justice (UCMJ), and wrongfully endeavoring to impede an investigation in violation of Article 134, UCMJ. He was sentenced to be reduced to pay grade E-1 and to receive a bad conduct discharge (BCD). See enclosure (3). The convening authority approved the sentence as adjudged by SPCM Order dated 10 January 2003. See enclosure (4).

d. On 10 January 2006, following affirmation by the Navy-Marine Corps Court of Criminal Appeals, Petitioner's BCD was ordered executed. See enclosure (4).

e. On 13 January 2006, Petitioner's BCD was executed. See enclosure (2).

f. On 26 May 2011, the Naval Discharge Review Board (NDRB) unanimously disapproved a request from the Petitioner to upgrade his characterization of service and to change the narrative reason for his separation. In reaching this conclusion, the NDRB rejected Petitioner's contention that clemency was warranted based upon his two previous honorable enlistment, and found that the evidence of Petitioner's post-service conduct was insufficient to warrant an upgrade to his characterization of service. See enclosure (5).

g. On 31 January 2013, the Department of Veterans Affairs (VA) assigned Petitioner a 30 percent disability rating for combat-related post-traumatic stress disorder (PTSD). See enclosure (6).

h. On 18 November 2015, the VA increased Petitioner's disability rating for PTSD to 70 percent, effective 20 December 2014. See enclosure (7).

i. On 19 July 2017, the VA granted Petitioner unemployability benefits related to his PTSD condition. See enclosure (8).

j. On 8 July 2016, the Majority of the Board recommended in Docket No. 7407-15 that Petitioner's BCD be changed to other than honorable (OTH) and that his narrative reason for

separation be changed to “Secretarial Authority.” The Majority specified that this recommendation was a matter of clemency, based upon the finding that Petitioner’s combat-related PTSD diagnosis, combined with the other mitigating factors, warranted relief. The Majority was not willing, however, to upgrade Petitioner’s characterization of service to honorable, as requested, due to the seriousness of his misconduct. See enclosure (9).

k. On 23 January 2017, the Assistant General Counsel (Manpower and Reserve Affairs) approved the Majority recommendation in Docket No. 7407-15. See enclosure (9).

l. On 10 March 2017, Petitioner was issued a new DD Form 214 reflecting that his service was characterized as OTH and that the narrative reason for his 13 January 2006 separation was “Secretarial Authority.” See enclosure (10).

m. Petitioner contends that Docket No. 7407-15 predated references (d) and (e), which clarified how the Board should have considered his PTSD condition, and that consideration under these guidelines would have resulted in an upgrade of Petitioner’s characterization of service to honorable. Specifically, Petitioner contends that the Majority’s finding that the severity of Petitioner’s misconduct outweighed any role that PTSD may have played in mitigating the misconduct is in direct contravention of reference (d), which states that “misconduct,” including “substance abuse” may itself be evidence of a mitigating mental health condition such as PTSD. Petitioner further contends that the Majority in Docket No. 7407-15 failed to adequately consider several factors that reference (e) identified as relevant when evaluating whether to grant relief based on equity or clemency, such as the military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds. See enclosure (1).

n. 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 found that Petitioner provided ample documentation to support his PTSD diagnosis and treatment, and informed the Board that persons suffering from PTSD often resort to maladaptive coping skills (i.e., alcohol/drug use) when dealing with mental health symptoms, and suggested that when Petitioner’s original coping mechanism of excessive alcohol use became obvious he turned to the less readily detectable substance of cocaine to deal with his symptoms. The AO noted that this type of maladaptive coping is common for person who have been exposed to a trauma and are unable to make the connection to PTSD. The AO concluded that there is sufficient evidence that Petitioner exhibited behaviors associated with PTSD during his military service, and that his misconduct may be mitigated by his PTSD. See enclosure (11).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner’s application warrants relief in the interests of justice.

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

Because Petitioner based his claim for relief in whole or in part upon his combat-related 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 PTSD condition and the effect that it may have had upon Petitioner's misconduct. The Board previously recognized and applied liberal consideration to Petitioner's PTSD condition in Docket No. 7407-15 in accordance with references (b) and (c), but it did not apparently consider whether Petitioner's PTSD mitigated the misconduct for which he was discharged, as has since become required by reference (d). In this regard, the Board found, consistent with the AO, that Petitioner's combat-related PTSD condition did mitigate Petitioner's drug use. This mitigation significantly detracts from the severity of Petitioner's misconduct, upon which the majority in Docket No. 7407-15 relied to deny further relief.

In addition to applying liberal consideration to Petitioner's PTSD condition and 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 long and mostly honorable service to the Navy, to include his service in combat; the mitigating effect of Petitioner's PTSD condition, as discussed above; that Petitioner developed PTSD as a result of his combat experience, and continues to suffer its effects even today; that Petitioner's in-service alcohol treatment program appears to have been interrupted by an overseas duty assignment; Petitioner's post-service record of rehabilitation and recovery, as well as his continuing service on behalf of Service members through his involvement with the [REDACTED] Petitioner's post-service record of professional and academic accomplishment; the nature of the misconduct for which Petitioner was discharged; and the passage of time since Petitioner's discharge. Based upon the totality of the circumstances, the Board determined that Petitioner's characterization of service should be upgraded to fully honorable in the interests of justice, as it could find no useful purpose in continuing to stigmatize Petitioner's long and distinguished service, including in combat, for misconduct that was significantly mitigated by his PTSD condition.

Finally, the Board believes that further relief is warranted in this case because the relief previously recommended by the Board in Docket No. 7407-15 was not tailored to have the intended effect. It is clear from the content of enclosure (9) that the Board felt that clemency was warranted in Petitioner's case, but by recommending an upgrade from BCD to only OTH the Board granted no real clemency. Although a BCD is considered a punitive discharge and OTH discharge is considered to be administrative, there is no significant functional difference between these two characterizations of service. Accordingly, the Board believes that relief is warranted to give effect to what appears to have been the intent of Docket No. 7407-15.

RECOMMENDATION:

In view of the above, 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 period of active duty service which ended on 13 January 2006 was characterized as honorable, and a separation authority consistent with his narrative reason for separation.

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

That Petitioner be issued an Honorable Discharge certificate for this period of active duty service.

That a copy of the record of proceedings be added to Petitioner's naval record.

That no further changes be made to 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.

8/11/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Upgrade to Honorable; Change Separation Authority to Reflect Previous Change to Narrative Reason for Separation)

~~Board Recommendation Disapproved (Deny Relief)~~

~~Petitioner's Alternative Request Approved (Upgrade to General (Under Honorable Conditions); Change Separation Authority to Reflect Previous Change to Narrative Reason for Separation)~~

9/20/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]