

[REDACTED]

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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty 28 December 1988.

d. On 27 September 2002, Petitioner was notified of administrative separation against him on the basis of misconduct due to drug abuse as evidenced by a positive urinalysis with a least favorable characterization of service of other than honorable. Petitioner elected to appear before an administrative separation board.

e. On 13 November 2002, an Administrative Separation Board voted by 2 to 1 that Petitioner committed the misconduct of drug abuse as evidenced by his positive urinalysis, and recommended by a vote of 2 to 1 that he be separated with an other than honorable discharge.

f. On 14 November 2002, the minority member of the Administrative Separation Board submitted a Letter of Dissent in which he provided a detailed analysis of the information presented at the Administrative Separation Board and articulated the reasoning behind his disagreement with the majority's finding and recommendations. The minority member noted Petitioner's character, articulated his concerns about possible bias on the part of one of the government witnesses about the testing results concerning the toxicity of hemp pills, and stated that he determined that the evidence failed to support the accusation sufficiently.

g. On 19 November 2002, a Letter of Deficiency was filed on behalf of Petitioner, requesting in part that Petitioner receive an honorable characterization of service.

h. On 14 February 2003, Petitioner was discharged on the basis of misconduct and received an other than honorable characterization of service and a reentry (RE) code of RE-4.

i. On 28 February 2017, the Naval Discharge Review Board (NDRB) notified Petitioner that it had determined that his discharge was proper as issued and that no change is warranted.

j. On 19 June 2017, a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty DD Form 215 was issued in which a reference to "Continuous Honorable Active Service from 19881229 until 19970918" was added to block 18, and a reference to "MILPERSMAN 1910-146" was added to block 25.

k. In his application to the Board, Petitioner requests an upgrade to his other than honorable discharge to reflect a general characterization of service and a change to his narrative reason for separation to reflect "Secretarial Authority" instead of "Misconduct." Petitioner contends that there is insufficient evidence to establish that he smoked marijuana. He notes that at the time of the urinalysis, he was taking hemp pills to self-medicate for Post Traumatic Stress Disorder

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(PTSD) symptoms. He states that after the positive urinalysis, he handed over the hemp pills and had three negative urinalysis. Petitioner notes that during the administrative separation board proceedings, one member maintained that Petitioner did not smoke marijuana. Petitioner contends that he proved that hemp pills can cause a false positive for small traces of THC found in pills. Petitioner states that his deployment in support of Desert Storm/Desert Shield resulted in PTSD, and asserts that he took the hemp pills to alleviate both physical and mental pain. He provides documentation establishing that he holds a 50% disability rating from Veterans Affairs for service connected PTSD.

l. As part of the review process, a licensed clinical psychologist reviewed Petitioner's available records and issued an Advisory Opinion which noted in part that during the administrative separation board hearing, Petitioner specified that he ingested hemp pills for pain and gauged how many pills he would ingest based on his time in the gym. The Advisory Opinion concluded that the available evidence failed to establish that Petitioner was diagnosed with a mental health condition, suffered from a mental health condition at the time of his military service, or that his in-service misconduct could be mitigated by a mental health condition.

m. Petitioner provided a response to the Advisory Opinion in which he reiterated that he suffers from service-connected PTSD and subsequently Cannabis Use Disorder which has been linked as a form of self-medication. The response further states that the Advisory Opinion is factually and medically incorrect, and notes that Petitioner's diagnosis of service-connected mental health conditions were based by a VA Psychologist who had the opportunity to conduct an in-person assessment and review of Petitioner's past records.

BOARD CONCLUSION

The Board concurred substantively with the determinations of the Advisory Opinion and found that even in consideration of the VA determination and noting Petitioner's personal statement, that the evidence did not support a finding that Petitioner suffered from a mental health condition at the time of his active duty Navy service that mitigated his in-service misconduct of wrongful use of a controlled substance. The Board, like the Advisory Opinion, noted that Petitioner stated during the administrative separation board hearing that he ingested hemp pills based on his time in the gym and in correlation to how hard he worked out. Accordingly, the Board concluded that Petitioner was likely ingesting hemp pills to address the physical pain resultant from workouts rather than to self-medicate PTSD symptoms. The Board reviewed Petitioner's application, considered his tremendous positive contributions to the Navy, and took particular note of the Letter of Dissent written by the minority administrative board member. The Board determined that although Petitioner was found guilty of misconduct of wrongful use of a controlled substance while on active duty and that his discharge appears to have been executed without error, that he is entitled to clemency based on his overall service record and his post-discharge efforts and achievements. The Board found Petitioner responsible for his misconduct of wrongful use of a controlled substance while on active duty, but determined that in consideration of the information reflected in his service record, the character letters submitted on his behalf, and the length of time since his discharge, Petitioner is entitled to an upgrade to his characterization of service to reflect a general discharge and that no further corrective action be taken.

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BOARD RECOMMENDATION:

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty to indicate that on 14 February 2003, Petitioner was discharged from the Navy with a general (under honorable conditions) character of service.

That no further corrective action should be taken.

That a copy of this report 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-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 Regulations, 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.

9/10/2021

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Executive Director

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