



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

[REDACTED]
Docket No: 1432-21
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 w/attachments
(2) NAVPERS 1070/613, Administrative Remarks, 13 May 1978
(3) DD Form 214
(4) [REDACTED] CO Memo, subj: Letter of Reprimand, 22 August 1983
(5) [REDACTED] CO Memo 5800 Ser 773, subj: Report of nonjudicial punishment (19 AUG 83) ICO [Petitioner], 1 September 1983
(6) BUPERS Memo Pers-82/NMPC-82 Ser 2437/821, subj: [Petitioner], 23 November 1983
(7) Petitioner's Memo, subj: Statement in regard to Letter of 22 August 1983, 26 August 1983
(8) Report of Board of Inquiry
(9) [REDACTED] CO Memo 5800 Ser N003/02853, subj: [Petitioner]; Officer Board of Inquiry in the case of, 27 March 1984
(10) BUPERS Memo 1920 Ser P821/1189, subj: Report of Board of Review in the case of [Petitioner], 26 April 1984
(11) CNP Memo 1920 Ser P821/1300, subj: Report of Board of Review in the case of [Petitioner], 26 July 1984
(12) NDRB Decisional Document Docket No. ND85-01879, 24 July 1985

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(13) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 18 July 2021

(14) Petitioner's Memo, subj: Request for Upgrade of Discharge, 24 July 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.
2. The Board reviewed Petitioner's allegations of error or injustice on 25 August 2021 and, pursuant to its regulations, determined that no corrective action 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. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and review Petitioner's application on its merits.
 - c. Petitioner was commissioned as an officer in the Navy and began a period of active duty service on 14 May 1978.¹ He was eventually promoted to the rank of lieutenant. See enclosure (3).
 - d. On 12 May 1983, Petitioner submitted a urine sample which tested positive for the presence of tetrahydrocannabinol (THC), indicating that Petitioner had used marijuana. See enclosure (4).
 - e. On 19 August 1983, Petitioner received nonjudicial punishment (NJP) for the above referenced use of marijuana in violation of Article 134, Uniform Code of Military Justice. His punishment consisted of a punitive letter of reprimand (PLOR), which was issued on 22 August 1983. See enclosures (4) and (5).
 - f. On 23 August 1983, Petitioner submitted a qualified resignation conditioned upon his receipt of a characterization of service no less favorable than general (under honorable conditions). See enclosure (6).
 - g. By memorandum issued in response to the above referenced PLOR dated 26 August 1983, Petitioner "vehemently maintain[ed] that [he had] never knowingly used marijuana." See enclosure (7).

¹ Petitioner was commissioned through the Naval Reserve Officers' Training Corps program at the University of [REDACTED] See enclosure (2).

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h. On 27 October 1983, the Chief of Naval Personnel (CNP) (PERS-8) denied Petitioner's qualified resignation, and solicited his unqualified resignation for the good of the service. On 2 November 1983, Petitioner declined to tender an unqualified resignation. See enclosure (6).

i. On 18 January 1984, a Board of Inquiry (BOI) was convened to consider whether Petitioner should be retained in the naval service. The BOI unanimously found that Petitioner committed misconduct by reason of unlawful drug use, and recommended that Petitioner be separated from the naval service under other than honorable (OTH) conditions. See enclosure (8).

j. By memorandum dated 27 March 1984, Petitioner's commander approved the BOI findings and recommendations, and forwarded them to the separation authority. See enclosure (9).

k. A Board of Review (BOR) convened on 24 April 1984 to review the findings and recommendation of the above referenced BOI. The BOR unanimously found that Petitioner failed to show sufficient cause for his retention in the naval service, and unanimously recommended that Petitioner be separated from the naval service for misconduct due to unlawful drug use with a general (under honorable conditions) characterization of service. See enclosure (10).

l. By memorandum dated 26 July 1984, the CNP endorsed and forwarded to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) the BOR recommendation that Petitioner be separated from the naval service for misconduct due to drug use with a general (under honorable conditions) characterization of service. See enclosure (11).

m. On 11 August 1984, the ASN (M&RA) approved the recommendation of the BOR that Petitioner be separated from the naval service for misconduct due to illegal drug use with a general (under honorable conditions) characterization of service. See enclosure (11).

n. On 30 September 1984, Petitioner was discharged from the Navy for drug abuse with a general (under honorable conditions) characterization of service. See enclosure (3).

o. On 28 June 1985, the Naval Discharge Review Board (NDRB) determined that Petitioner's discharge was proper as issued and that no change was warranted. Petitioner contended in his application to the NDRB that he was an outstanding officer and that he was not a drug user and cannot explain his positive urinalysis. See enclosure (12).

p. Petitioner contends that he was later identified as suffering from post-traumatic stress disorder (PTSD) during the period in question, and that his substance abuse was actually self-medication to cope with the symptoms of this undiagnosed condition. He further states that he continues to suffer from this condition, and that the stigma of his discharge adds to his imbalances. Although Petitioner contended that he suffered from PTSD during the time in question, he provided no background with his application regarding the traumatic event(s) which triggered this condition and/or clinical evidence to support his contention that he continues to suffer from and receive treatment for the condition. See enclosure (1).

q. 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 did not indicate the condition he experienced, traumatic events or subsequent symptoms that would indicate a mental health condition, or a linkage to his military service or his misconduct. Further, it found no in-service or post-discharge civilian clinical records to support his contention, although it did find a 2010 inquiry to the Department of Veteran's Affairs (VA) which reflected that Petitioner claimed his brother's death in a plane crash as a PTSD stressor. Based upon the available evidence, the AO found that the preponderance of objective evidence failed to establish that Petitioner was diagnosed with PTSD or suffered from PTSD at the time of his military service, or that his in-service misconduct could be attributed to PTSD or other mental health conditions. See enclosure (13).

r. By letter dated 24 July 2021, Petitioner responded to the AO discussed in paragraph 3q above. Specifically, Petitioner asserted that there was no mention in the AO of his VA records and that his 90 percent disability rating was mostly due to his service-connected PTSD diagnosis. Petitioner also stated that he was subjected to many traumatic incidents during his service which caused him to self-medicate with alcohol and other substances, to include several incidents of racially-motivated harassment and as his experience being lowered twice as a Boat Officer to recover a man overboard in choppy seas. Finally, he contends that he has had continual counseling and medications with a VA psychologist and psychiatrist for anxiety, depression, and PTSD, all of which are service connected. See enclosure (14).

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found insufficient evidence of any error or injustice to warrant relief.

Because Petitioner based his claim for relief in whole or in part upon his PTSD condition, the Board reviewed his application in accordance with the guidance of references (b) – (d). Accordingly, the Board applied liberal consideration to Petitioner's claim of PTSD, and the effect that such a condition may have had upon his misconduct. Even applying liberal consideration, however, the Board found insufficient evidence to conclude that Petitioner suffered from PTSD at the time of his misconduct, or that his misconduct was mitigated by his condition. While the Board recognizes that it may be difficult for Petitioner to provide proof of PTSD from the period in question, it notes that Petitioner claimed to have a 90 percent disability rating from the VA, mostly due to service-connected PTSD. Petitioner also claimed to have received continual treatment from VA mental health providers for this condition. However, he provided no documentary evidence to support these contentions, despite such evidence being specifically requested by the Board. If Petitioner's contentions are true, it should not be difficult for Petitioner to provide such evidence. Accordingly, the Board found insufficient evidence that Petitioner suffered from PTSD during his service, or that his misconduct was mitigated by his condition. The Board would encourage the Petitioner to request reconsideration in accordance with reference (a) if he can produce this evidence.

In addition to applying liberal consideration to Petitioner's mental health condition(s) and the effect that such condition(s) may have had upon his misconduct in accordance with references

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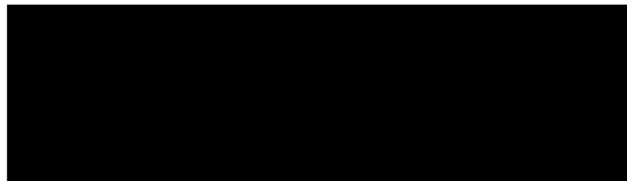
(b) – (d), the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Board considered, among other factors, Petitioner's contention that he developed PTSD during his naval service and that his substance abuse was a form of self-medication to cope with his symptoms; Petitioner's contention that he continues to suffer from and be treated for PTSD; Petitioner's otherwise favorable naval record, including his fitness reports reflecting his favorable performance prior to his misconduct; Petitioner's contention that he endured racially-motivated harassment during his naval service; the relatively minor nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. Given the totality of the circumstances, the Board did not believe that relief was warranted in the interests of justice. Specifically, the Board found that Petitioner's characterization of service remains appropriate under the totality of the circumstances. Relief may have been warranted if the recommendation of the BOI been adopted and Petitioner discharged under OTH conditions. However, a general (under honorable conditions) characterization of service is not adverse, and is entirely appropriate under the circumstances. The Board simply did not find the mitigating circumstances to so significantly outweigh Petitioner's misconduct to justify the extraordinary relief requested.

RECOMMENDATION:

In view of the above, 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.
5. The foregoing action of the Board is submitted for your review and action.

9/28/2021



Executive Director

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ACTING ASSISTANT SECRETARY OF THE NAVY FOR MANPOWER AND RESERVE
AFFAIRS DECISION:

NOV 03 2021

Board Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Grant Relief – Upgrade Petitioner's characterization of service to honorable.)



Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)