



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

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Docket No: 2494-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █ USN, █
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Ref: (a) 10 U.S.C. § 1552
(b) 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
(c) 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
(d) BUPERSINST 1900.8E, "Certificate of Release or Discharge from Active Duty (DD 214, DD 214C, DD 214WS, and DD 215), 27 August 2018

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214 (20110812 – 20111215)
(3) NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office
(4) NAVCRUIT 1131/113, Navy Officer Candidate Civil Engineering Corps (CEC) Officer (5100) Program Service Agreement, 12 August 2011
(5) Naval Facilities Engineering Command █ CO Memo 1621 Ser 00/194, subj: Report of Nonjudicial Punishment of [Petitioner], 7 August 2019
(6) NAVPERS 1626/7, Report and Disposition of Offense(s), 9 July 2019
(7) Order for Dismissal without Prejudice, *The People of Guam v. [Petitioner]*, in the Superior Court of █ Criminal Case No. █ filed 26 December 2019
(8) BUPERS Memo 1611 BUPERS-00B/033, subj: Detachment for Cause ICO [Petitioner], 28 January 2020
(9) CNP Memo 1920 Ser 00/127, subj: Administrative Separation ICO [Petitioner], 29 October 2020
(10) DODCAF Memo, subj: Favorable Security Determination after Due Process, 25 August 2020
(11) DD Form 214 (20110812 – 20201126)
(12) Department of Veterans Affairs Rating Decision, 8 February 2021
(13) BCNR Advisory Opinion, 2 August 2021
(14) Petitioner Memo, subj: Supplemental Statement in Respond to Physician Advisor Opinion Letter to the Board, 24 August 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 reentry code be corrected to permit his service in the reserve component.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 10 September 2021 and, pursuant to its regulations, determined that no corrective action 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) and (c).

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. On 12 August 2011, Petitioner enlisted in the USNR through the Civil Engineering Corps and attended Officer Candidate School (OCS) from 12 August 2011 to 15 December 2011. He was appointed as a commissioned officer upon his completion of OCS on 16 December 2011. See enclosures (2) through (4).

c. On 18 April 2019, Petitioner was arrested by the Guam Police Department for suspected fraudulent use of a credit card at a local Pizza Hut restaurant. Petitioner was caught using a credit card that did not belong to him to purchase food. Witnesses reported that Petitioner used a credit card number that belonged to another person and provided a false name to pay for a food order purchase. This credit card was later discovered in Petitioner's vehicle pursuant to a search warrant. Another credit card not belonging to the Petitioner was found in his wallet pursuant to a consent search incident to his arrest. This credit card had been used at the same restaurant on the previous day. See enclosure (5).

d. On 24 July 2019, Petitioner received non-judicial punishment (NJP) for two specifications of fraudulent use of credit cards in violation of Article 121a, Uniform Code of Military Justice (UCMJ); forgery in violation of Article 105, UCMJ; conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ; and service discrediting conduct by making a false statement to law enforcement and using a false name to pick up a pizza in violation of Article 134, UCMJ. He received a punitive letter of reprimand and 30 days of restriction. See enclosure (6).

e. By memorandum dated 7 August 2019, Petitioner's commander requested that Petitioner be detached for cause (DFC), removed from any promotion list, and required to show cause for retention in the naval service. See enclosure (5).

f. On 18 November 2019, the Superior Court of Guam dismissed the charges against Petitioner without prejudice. See enclosure (7).

¹ Petitioner is not requesting a change to his discharge or characterization of service, as such a request is pending with the Naval Discharge Review Board.

g. By memorandum dated 28 January 2020, the Deputy Chief of Naval Personnel (CNP) approved the DFC request. See enclosure (8).

h. By letter dated 13 February 2020, Petitioner was notified of the initiation of administrative proceedings requiring him to show cause for retention in the naval service before a board of inquiry (BOI). See enclosure (9).

i. On 28 February 2020, Petitioner acknowledged his rights and submitted a qualified resignation request for the good of the naval service. See enclosure (9).

j. By memorandum dated 13 May 2020, the Department of Defense Consolidated Adjudication Facility (DODCAF) notified Petitioner of its intent to revoke his eligibility for access to classified information and/or assignment to certain sensitive duties. See enclosure (10).

k. By memorandum dated 25 August 2020, DODCAF informed Petitioner that his security review had been adjudicated in his favor, and that he would remain eligible for access to classified information and/or assignment to duties that have been designated national security sensitive. See enclosure (10).

i. By memorandum dated 29 October 2020, the CNP recommended that the person performing the duties of (PTDO) the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) accept Petitioner's qualified resignation request and separate him with a general (under honorable conditions) characterization of service. See enclosure (9).

j. On 30 October 2020, the PTDO ASN(M&RA) approved the CNP's recommendation, accepting Petitioner's qualified resignation request with a general (under honorable conditions) characterization of service. See enclosure (9).

k. On 26 November 2020, Petitioner was discharged from the Navy for misconduct with a general (under honorable conditions) characterization of service. He was not assigned a reentry code by virtue of his status as a commissioned officer in accordance with reference (d). See enclosure (11).

l. On 8 February 2021, the Department of Veterans Affairs (VA) awarded Petitioner a 50 percent disability rating for service-connected "other specified trauma and stressor related disorder with anxiety, depression, and insomnia." The VA Rating Decision does not explain the trauma or stressor justifying this determination. See enclosure (12).

m. Petitioner contends that his discharge was not administered properly and was not fair or equitable considering the circumstances in effect at the time of the discharge. He also noted that the charges against him were dismissed and that his security clearance was reinstated. 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

noted that Petitioner did not describe the circumstances in effect at the time of his discharge, psychological symptoms/behavioral changes indicative of a mental health condition, the occurrence of a traumatic event or stressor, effect on occupational function, or any relationship between a mental health condition and his criminal misconduct. It also noted that Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes which may have indicated a mental health condition, and nothing else in his records reflected concerns which would have warranted referral to mental health resources. Based upon the available evidence, the AO found that the preponderance of objective evidence failed to establish that Petitioner suffered from a mental health condition at the time of his military service, or that his in-service misconduct could be attributed to a mental health condition. See enclosure (13).

o. By memorandum dated 24 August 2021, Petitioner provided a response to the AO discussed in paragraph 3n above. Specifically, Petitioner claimed to be under significant stress at the time of the events in question due in part to his father-in-law's health condition.² He was reportedly originally on orders to move stateside, where he would be closer to his father-in-law, but those orders were cancelled in favor of orders assigning him to [REDACTED]. This reportedly placed enormous emotional stress on his family, to the extent that he decided to send his family home while he remained in [REDACTED] to conduct all of the logistical requirements for his move to [REDACTED]. According to Petitioner, his arrest occurred on the last day of his household goods pack-out. As a result, his orders were cancelled and he was required to remain in [REDACTED] until his legal matters were resolved. He felt unsupported by the Navy during this period. After consulting with an attorney, he got permission to leave [REDACTED] on emergency leave to visit his father-in-law, who passed away in June 2020. Petitioner asserts that it was under these stressful circumstances that he said things during his NJP hearing that he regrets (presumably pleading guilty). He also asserts that he decided to resign because he did not want to be part of a team/command that didn't trust him and didn't support him when he needed support. Petitioner noted that the civilian authorities dismissed the charges against, and he regained his security clearance, but he was never permitted to return to normal duties. He also contends that the VA evaluation and rating supports his claim regarding the mental condition and challenges that he was enduring at the time. 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 warranting relief.

The Board found no error or injustice in the NJP administered to Petitioner or in the process by which he was discharged. Petitioner pled guilty to the charged offenses at his NJP hearing, and did not appeal the findings or punishment. Further, the charges for which Petitioner was found guilty were serious enough to warrant the initiation of show cause proceedings. Rather than appearing before a BOI, Petitioner elected to submit a voluntary resignation for the good of the naval service. The Board noted Petitioner's contention that he was under stress and disgruntled

² Petitioner states that his father-in-law was diagnosed with stage IV colon cancer.

as a result of his treatment at the time of his resignation request, but did not believe that these circumstances invalidated his request. The alternative to his voluntary resignation request would have been a BOI which, considering Petitioner's guilty plea at his NJP to serious charges which reflected adversely on both his integrity and the Navy, likely would have resulted in his involuntary separation with a potentially less favorable characterization of service. Accordingly, the Board found no merit in Petitioner's contention that his discharge was improperly administered and/or inequitable under the circumstances.

The Board found no error in the absence of a reentry code in Petitioner's case. In accordance with paragraph 3jj of enclosure (1) to reference (d), only enlisted personnel receive specific reentry codes tailored to their specific reason for separation. According, the Board concluded that it was appropriate not to assign Petitioner a reentry code. Further, even if it were possible to change Petitioner's reentry code, the Board unequivocally determined that such relief would not be warranted given the severity of Petitioner's misconduct. In this regard, the Board found no relevance in the dismissal of his charges by the civilian authorities, as Petitioner had previously admitted his guilt during his NJP hearing.

Although Petitioner did not specifically state that relief was warranted based upon his mental health condition, the Board nonetheless reviewed Petitioner's in accordance with the guidance of reference (b) based upon the VA rating decision. Accordingly, the Board applied liberal consideration to Petitioner's claimed mental health conditions and any effect that his condition(s) may have had upon his misconduct. Even applying liberal consideration, however, the Board found that Petitioner's misconduct was not mitigated by any mental health condition. The Board did not doubt that Petitioner was suffering from depression and/or anxiety during his service or that he was under a significant amount of stress. However, Petitioner's misconduct was not of a type which can be explained or mitigated by these conditions. Although the Board did not find that Petitioner's misconduct was mitigated by his mental health condition(s), these conditions were considered among the totality of the circumstances to determine whether relief is warranted in the interests of justice as discussed below.

Finally, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Board considered, among other factors, that the VA has awarded Petitioner with a 50 percent disability rating for service-connected "other specified trauma and stressor related disorder with anxiety, depression, and insomnia"; the stressful circumstances that Petitioner endured at the time of his misconduct and in the months that followed; Petitioner's contention that his discharge was not properly administered and that he was inadequately supported by the Navy during his time in need; that the civilian authorities dismissed the charges against Petitioner and his security clearance was restored; and the totality of Petitioner's career in the Navy. Even considering these potentially mitigating circumstances, the Board determined that relief is not warranted in the interests of justice. The Board did not find the treatment described by Petitioner in the wake of his arrest to be unreasonable under the circumstances. Further, the Board found the fact that the civilian authorities dismissed the charges against Petitioner to be irrelevant since Petitioner admitted to his misconduct. Ultimately, Petitioner received exactly what he asked for when he submitted his voluntary resignation, and he benefited as a result of that request with a better characterization of service than he may have otherwise received. Finally, as noted above, it

would be impossible to change Petitioner's reentry code given his status as a commissioned officer. Accordingly, the Board determined that relief is not warranted in the interests of justice.

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.

9/23/2021



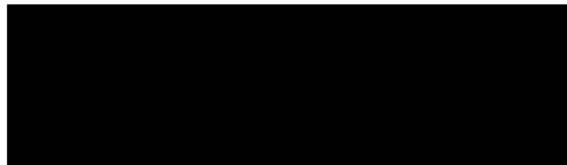
Executive Director

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

Board Recommendation Approved (Deny Relief)

SEP 28 2021

Petitioner's Request Approved (Modify Reentry Code to RE-1 or RE-1A)



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