



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

■
Docket No: 2704-21
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,
[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) DD Form 214
(3) NAVPERS 1070/607, dtd 24 Oct 81
(4) NAVPERS 1070/607, dtd 18 Jan 82
(5) NAVPERS 1070/607, dtd 24 May 83
(6) NAVPERS 1070/607, dtd 17 Dec 83
(7) [REDACTED] Msg, subj: [Petitioner]; Recommendation for Admin Separation by Reason of Misconduct due to Drug Abuse, dtg 191440Z Jan 84
(8) COMNAVMILPERSCOM Msg, subj: Misconduct Discharge ICO [Petitioner], dtg 291351Z Jan 84
(9) Psychological Report, undated
(10) BCNR Advisory Opinion, 4 June 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 28 July 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken.

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,
██████████

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 enlisted in the Navy and began a period of active duty service on 27 August 1980. See enclosure (2).

d. On 24 October 1981, Petitioner received non-judicial punishment (NJP) for an unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ). See enclosure (3).

e. On 18 January 1982, Petitioner received his second NJP for UA in violation of Article 86, UCMJ, and for missing movement in violation of Article 87, UCMJ. See enclosure (4).

f. On 22 May 1983, Petitioner received his third NJP for UA in violation of Article 86, UCMJ. See enclosure (5).

g. On 16 December 1983, Petitioner received his fourth NJP for "wrongfully using a habit forming narcotic drug" in violation of Article 134, UCMJ.¹ See enclosure (6).

h. By memorandum dated 10 January 1984, Petitioner was notified that he was being recommended for administrative separation from the Navy for misconduct due to drug abuse. Petitioner waived his right to counsel and to request an administrative separation board. See enclosure (7).

i. By message dated 19 January 1984, Petitioner's commander recommended that Petitioner be involuntarily separated from the Navy for misconduct due to drug abuse. See enclosure (7).

j. By message dated 29 January 1984, the separation authority directed that Petitioner be discharged from the Navy under other than honorable (OTH) conditions for misconduct. See enclosure (8).

k. On 3 February 1984, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (2).

¹ The substance abuse report pertaining to this incident reflects that Petitioner's tested positive for the use of cocaine.

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████, USN,
██████████

l. Petitioner has been diagnosed by a mental health provider with post-traumatic stress disorder (PTSD) as a result of his experiences in the Navy, as well as Obsessive-Compulsive Disorder and Unspecified Depressive Disorder. See enclosure (9).

m. Petitioner contends that he was recently diagnosed with PTSD as a result of events that occurred during his naval service. Specifically, he described two incidents which reportedly changed his life. First, he described being temporarily locked into a torpedo tube by his fellow Sailors as a prank. The second incident he described was being exposed to the fumes produced by epoxy fumes without protective equipment when he was tasked to paint and install linoleum in the officer's ward room on board his submarine. He also recalled fearing for his life after a conversation with a senior Sailor which caused him to believe that a Sailor of his caliber would be tossed overboard if he remained in the Navy. He contends that he never intended to be asked to be released from the Navy early, nor did he expect to end up in the state he was in when he choose to be discharged.²

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 revealed that Petitioner was diagnosed with Immature Personality Disorder by his unit Medical Officer upon his return from UA in October 1981. It also revealed that Petitioner was seen for depressive symptoms and possible bipolar disorder in June 1983. During one of his evaluations, Petitioner stated that he realized "something is not right but [I] can't do anything about it." Petitioner was eventually diagnosed with Depressive Reaction and personality disorder. In December 1983, Petitioner was described as an "intelligent yet depressed young man." He was also found to be psychologically dependent on alcohol and a poly-substance abuser, and recommended for Level III substance abuse treatment. Based upon the available evidence, the AO found sufficient evidence that Petitioner exhibited behaviors associated with a mental health condition during his military service and that his misconduct may be mitigated by his mental health condition. See enclosure (10).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner's characterization of service should be upgraded in the interests of justice.

The Majority found no error or injustice in Petitioner's discharge under OTH conditions for misconduct due to drug abuse. Although he asserts that he did not intend to ask to leave the service early, the evidence reflects that his discharge was involuntary. Petitioner waived his right to an administrative separation board, but that waiver merely streamlined the separation process that almost certainly would have produced the same result given the quantity of Petitioner's misconduct.

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).

² The evidence reflects that Petitioner's discharge from not voluntary.

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

Accordingly, the Majority applied liberal consideration to Petitioner's claimed PTSD condition, and the effect that it may have had upon his misconduct. In this regard, the Majority substantially agreed with the AO that there was sufficient evidence that Petitioner suffered from a mental health condition during his naval service, and that Petitioner's misconduct may be mitigated by that condition. While the Majority was uncertain that Petitioner suffered from PTSD, it was clear that he was suffering the effects of depression, and that this condition could have contributed to his misconduct.

In addition to applying liberal consideration to Petitioner's mental health condition and any 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 mental health condition upon his misconduct, as discussed above; that Petitioner has been diagnosed with PTSD as a result of his naval service; that Petitioner has continued to suffer the effects of his mental health condition long after his discharge from the Navy; the nonviolent and relatively minor nature of the misconduct for which Petitioner was discharged; 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 found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, and that therefore the interests of justice are served by upgrading his characterization of service to general (under honorable conditions). The Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable as he requested, but determined that the mitigating circumstances did not so significantly outweigh the frequency of Petitioner's misconduct to warrant such extraordinary relief.

Although not specifically requested by the Petitioner, the Majority also determined that Petitioner's narrative reason for separation, separation code, separation authority, and reenlistment code should be changed in the interests of justice to minimize the likelihood of negative inferences being drawn from his naval service in the future.

MAJORITY RECOMMENDATION:

In view of the above, the Majority recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his separation code was "JFF"; and that his reenlistment code was "RE-1J."

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further correction action be taken on Petitioner's naval record.

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

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 to warrant relief.

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge under OTH conditions for drug abuse. Petitioner did not request to be separated. He was involuntarily separated for drug abuse, and his waiver of his right to an administrative separation board almost certainly had no effect on his discharge, as such a board likely would have recommended that he be separated under OTH conditions given the frequency of his misconduct.

The Minority also applied liberal consideration to Petitioner's mental health 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 did not doubt that Petitioner suffered from a mental health condition during his naval service, and that this condition may have mitigated his misconduct. However, even applying liberal consideration and assuming that Petitioner's mental health condition mitigated his misconduct, the Minority did not believe that relief is warranted under the totality of the circumstances. With four separate NJPs, the Minority found that Petitioner's misconduct significantly outweighed the potentially mitigating circumstances. Accordingly, the Minority determined that Petitioner's OTH characterization of service was, and remains, appropriate under 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.

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

8/26/2021

[REDACTED]

Executive Director

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

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Upgrade to General (under honorable conditions);
Change Narrative Reason for Separation, Separation Authority, Separation Code, and
Reenlistment Code)

~~MINORITY Recommendation Approved (Deny Relief)~~

~~Petitioner's Request Approved (Upgrade to Honorable)~~

10/31/2021

[REDACTED]
Assistant General Counsel (M&RA)
[REDACTED]