



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

█
Docket No: 2790-21

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER █ USN,
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 Post Traumatic Stress Disorder," 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 1070/613, Administrative Remarks, 6 April 1994
(4) NAVPERS 1070/602, History of Assignments
(5) NAVPERS 1070/607, Court Memorandum, 20 February 1995
(6) █ CO Memo 1910 █, subj: Notice of an Administrative Board Procedure Proposed Action, 21 February 1995
(7) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 21 February 1995
(8) █ Msg, subj: [Petitioner]; Recommendation for Admin Separation by Reason of Misconduct due to Commission of a Serious Offense, dtg 061050Z Mar 95
(9) BUPERS Msg, subj: Admin Discharge ICO [Petitioner], dtg 151859Z Mar 95
(10) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 24 August 2021
(11) On Site Academy Letter, 15 September 2021
(12) BCNR Memo, subj: Revised Advisory Opinion ICO [Petitioner], 27 September 2021

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed

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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 October 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, 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 regulations 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 5 April 1994. See enclosure (2). During the enlistment process, Petitioner had failed to disclose previous involvement with civil authorities and/or drug abuse, but was permitted to continue with his enlistment based upon information that he provided to the Recruit Quality Assurance Interviewer. See enclosure (3).

d. On 18 July 1994, Petitioner reported onboard the USS [REDACTED] (CVN 69) See enclosure (4).

e. On 10 February 1995, Petitioner was convicted by a summary court-martial (SCM) of three specification of unauthorized absence (UA) totaling 44 days and nine specifications of being absent from his appointed place of duty, in violation of Article 86, Uniform Code of Military Justice (UCMJ),¹ and missing ship's movement in violation of Article 87, UCMJ. He was sentenced to 30 days of confinement. See enclosure (5).

f. By memorandum dated 21 February 1995, Petitioner was notified that he was being considered for administrative discharge action by reason of misconduct due to commission of a serious offense. See enclosure (6).

g. By memorandum dated 21 February 1995, Petitioner elected not to consult with counsel and to waive his right to make a statement or to have his case heard by an administrative discharge board. He also indicated that he did not object to the proposed separation. See enclosure (7).

¹ Petitioner was found to be in a UA status from 6-11 October 1994; 14-26 October 1994; and 30 October 1994 – 18 November 1994.

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h. By message dated 6 March 1995, Petitioner's commander recommended that Petitioner be discharged from the Navy under other than honorable (OTH) conditions by reason of misconduct due to commission of a serious offense. See enclosure (8).

i. By message dated 15 March 1995, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (9).

j. On 4 April 1995, Petitioner was discharged from the Navy under OTH conditions for misconduct. See enclosure (2).

k. Petitioner contends that he developed nocturnal enuresis shortly after his arrival onboard the [REDACTED].² Being extremely embarrassed by this condition, he claims to have gone to his supervisor for help, but was accused of lying and trying to get out of the Navy. This reportedly resulted in constant ridicule and even physical assaults by his fellow shipmates. It was under these circumstances that Petitioner claims he went UA. When he returned to duty to face discipline, he asserts that his commander did not want to hear his explanation and told him that he would be better off out of the Navy. Despite his medical condition, Petitioner claims to have gone on to serve his community as a firefighter and paramedic, rising through the ranks to become a [REDACTED] in charge of an Advanced Life Support Level Fire Department. He has served as a firefighter for the last 25 years. Petitioner also claims that he has been diagnosed with post-traumatic stress disorder (PTSD) triggered by his experience in the Navy. See enclosure (1).

l. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. This AO noted that there was no evidence in Petitioner's in-service records of any diagnosis or psychological/behavioral changes which may have indicated a mental health condition. It also found no concerns noted throughout Petitioner's naval record which would have warranted referral to mental health resources. Besides finding no evidence indicating a mental health condition in Petitioner's records, the AO also noted that Petitioner provided no clinical evidence of a diagnosis, symptoms comprising the clinical diagnosis, evaluation indicating in-service occupational impairment, or linkage to his misconduct. Accordingly, the AO found that the preponderance of the evidence failed to establish that Petitioner suffered from PTSD at the time of his service, or that his in-service misconduct could be attributed to PTSD or other unfitting mental health condition. See enclosure (10).

m. In response to the AO discussed in paragraph 3l above, Petitioner provided a letter dated 15 September 2021 from a licensed psychologist. This letter expressed the clinical opinion of the author that Petitioner's experience in the Navy resulted in significant post trauma symptoms which have greatly affected him in the more than 20 years since his discharge. Specifically, this individual opined that the hazing, emotional distress, and ostracism that Petitioner experienced in the Navy resulted in sleep disturbances, nightmares, flashbacks, and hypervigilance. See enclosure (11).

² Nocturnal enuresis is the clinical term for "bedwetting."

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n. Upon receipt and review of the letter described in paragraph 3m above, the mental health professional who provided the AO discussed in paragraph 3i revised his opinion. Specifically, he revised his opinion to find that there exists indirect evidence that Petitioner likely suffered from the condition of Chronic Nocturnal Enuresis throughout this military career. As Petitioner was diagnosed post-discharge with PTSD originating from his experience of ongoing emotional and physical abuse (incurred as a result of his chronic “bedwetting”), this mental health professional opined that Petitioner’s in-service misconduct may have been attributable to his mental health condition. See enclosure (12).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that relief is warranted in the interests of justice.

Because Petitioner based his claim for relief in whole or in part upon his PTSD condition, the Majority reviewed Petitioner’s application in accordance with the guidance of references (b) – (d). 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 did not doubt Petitioner’s post-service PTSD diagnosis. It also did not doubt that Petitioner’s condition was very embarrassing, and likely resulted in poor treatment by his peers and/or superiors. However, the Majority had some doubts regarding whether Petitioner’s misconduct was mitigated by PTSD. First, Petitioner had been onboard the [REDACTED] for less than four months before he started going UA, and some of that period was at sea. Petitioner did not provide details regarding exactly when his condition commenced, but the Majority harbored some doubts that Petitioner’s PTSD condition could have developed so quickly under the circumstances described to have mitigated the misconduct for which Petitioner was discharged. Additionally, most of Petitioner’s misconduct involved the failure to report to his assigned place of duty; he was not UA, but simply not where he was supposed to be. It was not apparent to the Majority how a PTSD condition would mitigate Petitioner’s ability to be where he was supposed to be. Ultimately, the Majority found it more likely that Petitioner’s misconduct was simply an understandable effort to avoid the embarrassment of his medical condition and/or the reaction that it generated, rather than a symptom of PTSD. Although the Majority had some doubts regarding whether Petitioner’s PTSD condition mitigated his misconduct, it did consider the existence of this condition and its connection to Petitioner’s naval service among the totality of the circumstances to determine whether relief is warranted in the interests of justice, as discussed below.

In addition to applying liberal consideration to Petitioner’s PTSD condition and the 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 was warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, that Petitioner has been diagnosed with PTSD as a result of his experience in the Navy and has endured its effects for more than 20 years; that Petitioner suffered from an embarrassing medical condition while in the Navy, which likely resulted in poor treatment and undoubtedly contributed to his decision to go UA; Petitioner’s contention that he sought help for his condition from his superiors, but was instead accused of lying; that Petitioner has been a

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productive member of society since his discharge from the Navy, as evidenced by his extensive service to the community as a firefighter and paramedic; Petitioner's relative youth at the time of his misconduct; the relatively minor nature of the misconduct for which Petitioner was discharged; and the passage of time since Petitioner's discharge. Based upon this review, the Majority found that the mitigating circumstances far outweighed the relatively minor misconduct for which Petitioner was discharged. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to honorable. Although not specifically requested by the Petitioner, the Majority also determined that Petitioner's narrative reason for separation should be changed to "Secretarial Authority" to spare Petitioner the potential for negative inferences being drawn from his naval service.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board 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 "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; and that his separation code was "JFF."

That Petitioner be issued an Honorable Discharge Certificate.

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

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

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board also determined that relief is warranted in the interests of justice.

Like the Majority, the Minority also applied liberal consideration to Petitioner's PTSD 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). The Minority agreed with the Majority regarding Petitioner's PTSD condition, and that relief was warranted in the interests of justice based upon the totality of the circumstances. It disagreed with the Majority conclusion, however, that the mitigating circumstances so significantly outweighed the misconduct for which Petitioner was discharged to justify an upgrade of Petitioner's characterization of service to fully honorable. In less than one full year of service, Petitioner had been UA three separate times for 44 days, failed to be at his appointed place of duty nine times, missed his ship's movement, and spent a month in confinement. Even considering the mitigating circumstances, the Minority found that Petitioner's service simply was not honorable and should not be characterized in the same manner as other Sailors who actually serve honorably. The Minority agreed that the mitigating circumstances outweighed the misconduct against which Petitioner was discharged, but not so significantly to justify the extraordinary relief recommended by the Majority.

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Accordingly, the Minority recommended that Petitioner's characterization of service be upgraded to general (under honorable conditions). For the same reason, the Minority did not agree with the Majority determination that Petitioner's accurate narrative reason for separation should be changed.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board 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 a copy of the record of proceedings be filed in Petitioner's naval record.

That no further 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.

11/18/2021

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief – Upgrade to Honorable; Change Narrative Reason for Separation)

MINORITY Recommendation Approved (Partial Relief – Upgrade to General (under honorable conditions); No Change to Narrative Reason for Separation)

Board Recommendation Disapproved (Deny Relief – I agree with the Board determination that there was insufficient evidence that Petitioner’s PTSD condition mitigated his misconduct, but disagree with the finding that the mitigating circumstances outweighed Petitioner’s misconduct and that relief is warranted given the totality of the circumstances.)

12/13/2021

Assistant General Counsel (M&RA)

Signed by: [REDACTED]