



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: 3016-21
Ref: Signature Date

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

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

- 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 Traumatic Brain Injury (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 1070/609, Enlisted Performance Record
(3) NAVPERS 1070/613, Administrative Remarks
(4) NAVPERS 1626/7, Report and Disposition of Offenses, 29 March 1993
(5) Naval █ CO Memo 1910 0905, subj: Notice of an Administrative Board Procedure Proposed Action, 29 April 1994
(6) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 29 April 1994
(7) Naval Hospital █ CO Memo 1910 Ser 0905/1666, subj: Recommendation for Separation ICO [Petitioner], by Reason of Misconduct due to Drug Abuse, 6 May 1994
(8) BUPERS Msg, subj: Admin Discharge Authorization PERS 832, dtg 181828Z May 94
(9) DD Form 214 (19930426 – 19940527)
(10) Department of Veterans Affairs Rating Decision, 13 March 2020
(11) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 14 September 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 and that his narrative reason for separation be changed to "Other designated physical or mental health condition."

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2. The Board reviewed Petitioner's allegations of error or injustice on 1 November 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 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 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 consider Petitioner's application on its merits.

c. Petitioner enlisted in the Navy pursuant to a drug waiver and began a period of active duty on 26 April 1989.¹ Upon completion of his initial four-year enlistment, Petitioner was recommended for and reenlisted for an additional three years effective 26 April 1993. See enclosure (2).

d. From 23 August 1990 to 10 March 1991, Petitioner deployed as part of the ██████████ ██████████ in support of ██████████. He was commended for his performance during this deployment. See enclosure (3). Petitioner contends that he deployed again about four or five months later in support of ██████████ ██████████ for approximately eight months.² See enclosure (1).

e. On 24 April 1994, the Petitioner received nonjudicial punishment for wrongfully using marijuana in violation of Article 112a, Uniform Code of Military Justice. See enclosure (4).

f. By memorandum dated 29 April 1994, Petitioner was notified that he was being considered for an administrative separation from the Navy by reason of misconduct due to drug abuse. See enclosure (5).

g. By memorandum dated 29 April 1994, Petitioner waived his right to consult with counsel and to request an administrative discharge board. See enclosure (6).

h. By memorandum dated 6 May 1994, Petitioner's commander recommended that he be discharged from the Navy under other than honorable (OTH) conditions for misconduct due to drug abuse. See enclosure (7).

i. By message dated 18 May 1994, the separation authority directed that Petitioner be separated from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (8).

¹ Petitioner tested positive for the use of marijuana during his accession drug test.

² Petitioner's naval record reflects award of a Sea Service Deployment Ribbon effective 3 August 1992.

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j. On 27 May 1994, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (9).

k. On 13 March 2020, the Department of Veterans Affairs (VA) awarded Petitioner a 50 percent disability rating for service-connected post-traumatic stress disorder (PTSD), effective 17 November 2018. The VA denied Petitioner's disability claim for service-connected depression. See enclosure (10).

l. Petitioner contends that his discharge was unjust because his misconduct was the result of his undiagnosed and untreated PTSD, depression, and anxiety conditions. He asserts that if the present policies and procedures regarding PTSD screenings had been in place at the time, he likely would have received treatment rather than being discharged. He further contends that his OTH characterization of service was unjustly harsh given his otherwise laudible military service, and that his post-service conduct warrants relief. Petitioner described the traumatic incidents to which he was exposed during his first deployment, which included witnessing missiles being fired toward Baghdad, dismembered bodies being brought onboard his ship, and his friends drowning when their liberty boats overturned. During his second deployment, he states that he was required to constantly prepare for chemical warfare. He claims to have immediately experienced flashbacks and nightmares upon his return from deployment, as well as symptoms of daily anxiety, loss of appetite, and insomnia, and that he turned to marijuana to help him cope with his undiagnosed and untreated mental health issues. He further claims to have continued to be impacted by his PTSD symptoms after his discharge. Since his discharge, Petitioner claims to have been regularly employed and a strong provider for his family. He has worked as a warehouse supervisor at [REDACTED] for the last 11 years, and is described by his supervisor as a "team player who is always willing to assist his teammates and being willing to take on additional tasks as necessary." See enclosure (1).

m. Because Petitioner based his claim for relief in whole in or part upon combat-related PTSD, his 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 no evidence in Petitioner's in-service records of a diagnosis for or psychological/behavioral changes consistent with the existence of a mental health condition. It also found no concerns noted throughout his disciplinary actions and administrative processing which would have warranted referral to mental health resources. Although finding no such evidence in Petitioner's service records, the AO did find that Petitioner's stated history of traumatic experiences, psychological symptoms and behavioral changes consistent with PTSD, and VA evaluation granting compensation for service-connected PTSD supported his contention that he developed PTSD as a result of his military service and that this condition mitigated his misconduct. The AO ultimately found that the preponderance of objective evidence supported Petitioner's contention of undiagnosed PTSD incurred as a result of his military service, and that this condition mitigated Petitioner's in-service misconduct. See enclosure (11).

MAJORITY CONCLUSION:

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

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Because Petitioner based his claim for relief in whole or in part upon his mental health conditions (PTSD, depression, and anxiety), the Majority reviewed his application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner’s claimed mental health conditions and the effect that they may have had upon his misconduct. In this regard, the Majority substantially agreed with the AO finding that there is sufficient evidence that Petitioner developed PTSD as a result of his service in the Navy, and that this condition may have mitigated the misconduct for which Petitioner was separated. Even applying liberal consideration, however, the Majority found insufficient evidence of Petitioner’s claimed depression and anxiety conditions, but presumed that these symptoms would be related to his PTSD condition.

In addition to applying liberal consideration to Petitioner’s mental health conditions and the effect that they 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 the mitigating effect of Petitioner’s PTSD condition upon the misconduct for which he was discharged, as discussed above; Petitioner’s meritorious service during two combat deployments; that Petitioner continued to suffer the effects of his undiagnosed service-connected PTSD condition long after his discharge; Petitioner’s otherwise meritorious naval career, as reflected by his favorable performance trait rankings, his honorable completion of his first enlistment, and his decorations and awards; Petitioner’s post-service employment record, reflecting his rehabilitation from the misconduct for which he was separated by becoming a productive and valuable member of his community; Petitioner’s relative youth and immaturity at the time of his misconduct; the relatively minor nature of Petitioner’s misconduct; and the passage of time since Petitioner’s discharge. Based upon this review, the Majority determined that the mitigating circumstances outweighed the relatively minor nature of the misconduct for which Petitioner was discharged, and that an upgrade of his characterization of service to general (under honorable conditions) was warranted.

The Majority considered whether Petitioner’s characterization of service should be upgraded to fully honorable as requested by Petitioner, but determined that such relief was not warranted under the totality of the circumstances. In this regard, the Majority noted that Petitioner had entered the Navy pursuant to a drug waiver when he tested positive for the use of marijuana during the accession process. As such, he was already provided an opportunity to correct his behavior and was on notice that further drug use would have adverse consequences, yet he turned to such use again regardless. While the Majority believed that Petitioner’s PTSD condition may have mitigating this use, it found these circumstances to aggravate his misconduct. Accordingly, the Majority did not believe that the mitigating circumstances so substantially outweighed Petitioner’s misconduct to justify such extraordinary relief.

The Majority also considered Petitioner’s request to change his narrative reason for separation to “Other designated physical or mental conditions.” However, the Majority found no evidence that Petitioner would have qualified for separation for this reason, as PTSD is not a disqualifying mental health condition which would justify separation for this reason. Further, the Majority determined that Petitioner’s narrative reason for separation from the Navy was and remains

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accurate, and that the mitigating circumstances did not so significantly outweigh the misconduct for which Petitioner was discharged to warrant such a change.

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 for the period 26 April 1993 to 27 May 1994, reflecting that his service was characterized as "General (under honorable conditions)."

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

That no further changes be made to Petitioner's record.

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 warranting relief.

The Minority also applied liberal consideration to Petitioner's mental health condition(s) and the effect that they 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 question Petitioner's current PTSD diagnosis, but noted several factors which raised doubts regarding whether this condition contributed to the misconduct for which he was discharged. First, the Minority noted that Petitioner had enlisted in the Navy pursuant to a waiver for the same conduct for which he was discharged. This suggested to the Minority that Petitioner's drug use may not have been to cope with PTSD symptoms, but rather a reversion to a pre-existing habit. Additionally, the Minority noted that Petitioner voluntarily reenlisted in 1993, but all of the traumatic events that he described occurred in 1990-1992. This raised doubts for the Minority as to whether Petitioner was actually struggling with the traumatic events that he claimed to have experienced. Based upon these doubts and the fact that Petitioner used marijuana after being granted a waiver to enlist despite testing positive for previous use during the accession process, the Minority did not believe that relief was warranted 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.

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

11/19/2021

[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to General (under honorable conditions); No change to narrative reason for separation.)

MINORITY Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Full Relief – Upgrade to Honorable; Change narrative reason for separation and the associated separation authority and separation code to reflect "Secretarial Authority." Petitioner's request to change the narrative reason for separation to "Other designated physical or mental conditions" is not appropriate since he did not have a condition which qualified for such designation.)

12/13/2021

[REDACTED]