



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

█
Docket No: 4275-21
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 PTSD," of 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," of 24 February 2016
(d) PDUSD 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," of 25 August 2017
(e) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 naval record be corrected to reflect an upgraded characterization of service, change his narrative reason for separation and reenlistment code.

2. The Board consisting of █, █ and █ reviewed Petitioner's allegations of error and injustice on 2 February 2022 and, pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) through (e). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and Petitioner's rebuttal response to the AO.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

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a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

b. Petitioner enlisted in the Navy and began a period of active duty on 1 June 1982 with a significant history of pre-service mental health treatment that he failed to disclose as part of his entrance physical.

c. On 6 January 1984, Petitioner received non-judicial punishment (NJP) for two specifications of disobeying a lawful order and an absence from his appointed place of duty. On 9 March 1984, Petitioner received his second NJP for an unauthorized absence, violation of a lawful order and assault. On 25 March 1984, Petitioner received an administrative remarks (Page 13) counseling informing him that he was being retained in the naval service, however, deficiencies in his performance were identified. Additionally, Petitioner was advised that further deficiencies in his performance may result in his processing for administrative separation which could be under other than honorable (OTH) conditions. On 15 July 1984, Petitioner received his third NJP for absence from his appointed place of duty. On 20 September 1984, Petitioner received his fourth NJP for larceny.

d. On 23 September 1984, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct. Petitioner was advised of, and waived his procedural rights, to consult with military counsel and to present his case to an administrative discharge board (ADB).

e. Petitioner's commanding officer (CO) then forwarded his administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Navy with an other than honorable (OTH) characterization of service. Prior to the SA's decision, on 19 October 1984, Petitioner was convicted by a summary court-martial (SCM) of disrespect towards a commissioned officer.

f. The SA approved the CO's recommendation and directed that Petitioner be administratively discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct, and on 18 December 1984, Petitioner was so discharged.

g. Petitioner contends that at the time of his discharge he had an undiagnosed mental health condition. The passage of time since his discharge, coupled with decades of good conduct has made the OTH discharge unjust. Additionally, through counsel, Petitioner contends the following:

1) The conduct leading to his discharge was caused or mitigated by an untreated mental health condition;

2) Petitioner has lived with attention-deficit/hyperactivity disorder (ADHD) since childhood, and while this disability is widely known today, he was not diagnosed until after his

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service and despite the late diagnosis, this disability caused or contributed to his struggles during his service;

3) Petitioner sought help in 1983, prior to any misconduct occurring. Because ADHD was not well understood during his service, assistance was not available in the manner it would be today. If he had received assistance, at that critical moment when he sought help, many of his problems more likely than not could have been avoided;

4) Had he been discharged under today's standards, he would have received heightened screening to determine if the uncharacteristic conduct that led to his discharge was caused by a mental health condition; and

5) Since his service in the Navy, he has been diagnosed with and continues to be treated for multiple conditions including ADHD, for which he now takes medication, and has maintained long-term employment.

h. 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 in-service, Petitioner was diagnosed with a mild adjustment disorder that did not require treatment. Post-service, Petitioner has been diagnosed with ADHD and other mental health conditions. Pre-service, Petitioner was diagnosed with "psychoneurotic disorder" and "personality pattern disturbance." The AO noted that while it is reasonable to consider that the Petitioner's mental health symptoms, conceptualized currently as ADHD, were labeled as other conditions prior to the Petitioner's entry into service, it is difficult to consider that the Petitioner was unaware that he spent three years in a residential treatment facility, with two subsequent years of individual treatment for mental health concerns during his adolescence. Additionally, while impulsive and disorganized behaviors are consistent with an ADHD diagnosis, the individual is still responsible for their actions and any consequences thereof. The AO concluded by opining that there is evidence that Petitioner was experiencing a mental health condition during his military service, there is insufficient evidence that his misconduct could be attributed to a mental health condition. Petitioner submitted a response to the AO arguing, in part, that while his mental health condition may not excuse his misconduct, it should be considered as a mitigating factor based on the symptoms of impulsive and disorganized behavior.

CONCLUSION:

The purpose of the Secretary of Defense memorandum is to ease the process for Veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty Veterans face on "upgrading their discharges based on claims of previously unrecognized" mental health conditions. The memorandum further explains that, since mental health conditions were not previously recognized as a diagnosis at the time of service for many Veterans, and diagnoses were often not made until after service was completed, Veterans were constrained in their arguments that mental health conditions should be considered in mitigation for misconduct committed or were unable to establish a nexus between a mental health condition and the misconduct underlying their discharge.

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The Board, upon review of the AO, applying liberal consideration, and noting Petitioner's supporting documentation, determined there was sufficient evidence to support a finding that Petitioner suffered from a mental health condition. The Board concluded this mental health condition mitigated, but did not excuse, his misconduct that subsequently resulted in his other than honorable characterization of service discharge. Accordingly, the Board concluded some form of relief was merited under references (b) through (e). Despite strong evidence Petitioner entered the Navy fraudulently by failing to disclose his substantial pre-service mental health issues, after weighing the totality of the evidence, the Board concluded that Petitioner's characterization of service shall be changed to "Honorable." Additionally, in the interest of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason, separation code, and separation authority should be changed to "secretarial authority" as well as his reentry code changed to "RE-1."

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 18 December 1984, Petitioner's characterization of service was "Honorable," narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the reenlistment code was "RE-1," and the separation authority was "MILPERSMAN 1910-164."

No further action be granted.

That a copy of this report of proceedings be filed in 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 entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2/14/2022

[REDACTED]

Executive Director

[REDACTED]