



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

[REDACTED]
Docket No: 5045-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
[REDACTED] USN

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments

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 change his narrative reason for separation to disability.

The Board, consisting of [REDACTED], [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 October 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record, applicable statutes, regulations, and policies to include the 2018 Under Secretary of Defense Memo on Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations (Wilkie Memo).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. Petitioner entered active duty with the Navy in September 1989. Non-judicial punishment was imposed on him for larceny in January 1991. During this time, Petitioner asserts he deployed to Iraq in support of Desert Shield/Desert Storm during which he witnessed deaths that caused him trauma. On 14 Jul 1992, Petitioner was convicted by a General Court-Martial for unauthorized absences, an orders violation, writing worthless checks, and a general orders violation. As part of his sentencing, he was awarded a Bad Conduct Discharge that was executed on 12 July 1993. Prior to his discharge, medical records document Petitioner was suffering from Type II Diabetes that was treated with insulin.

c. Post-discharge, Petitioner's medical condition appear to have worsened over the years. He underwent a below right knee amputation in 2017 and exhibited symptoms of Post-Traumatic Stress Disorder (PTSD) in 2019.

[REDACTED]

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, the Board determined that the preponderance of the evidence supports granting clemency in the form of upgrading Petitioner's characterization of service to General and changing his narrative reason for separation to Secretarial Authority. The Board concluded Petitioner's current medical condition was sufficiently serious to overlook his active duty misconduct and merit granting partial relief in his case to allow him to seek Department of Veterans Affairs (VA) treatment and compensation for his medical conditions. In making their findings, the Board considered Petitioner's personal statement regarding the traumatic experiences he suffered while deployed to Iraq. They also took into consideration that he was a relatively good performer prior to his court-martial conviction and earned a 3.2 final trait average during his enlistment.

Despite their decision to grant the partial relief described above, the Board determined Petitioner's request for military disability benefits should be denied based on lack of evidence he was unfit for continued naval service at the time of his discharge. The Board found no evidence Petitioner suffered from an occupational impairment while on active duty due to any disability condition. In making their finding, the Board noted that Petitioner's diabetes condition was under control with treatment and Petitioner documented he was in "good health" prior to his release from active duty. In addition, the Board also noted Petitioner was not eligible for disability processing due to his misconduct that resulted in a Bad Conduct Discharge. Despite their recommendation to upgrade Petitioner's characterization of service and change his narrative reason for separation to Secretarial Authority to allow him to seek VA benefits, the Board did not excuse Petitioner's misconduct and concluded the evidence supports his discharge from the Navy for misconduct. Accordingly, the Board found the preponderance of the evidence does not support any additional changes to Petitioner's record.

RECOMMENDATION

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

Petitioner's naval record be corrected by changing his characterization of service to "General under Honorable Conditions," his narrative reason for separation to "Secretarial Authority," and SPD code to "JFF." Petitioner will be issued a new DD Form 214 consistent with this change.

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.

10/24/2021

[REDACTED]

Deputy Director

[REDACTED]