



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

██████████
Docket No: 5472-21
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
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 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 (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (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) DD Form 214
(3) Petitioner's Sworn Statement, 13 March 1969
(4) Fleet ██████████ CO Memo FF12/VQ-1/N13 1900 Ser 1616,
subj: Administrative separation; advisement of and privileges concerning,
24 June 1969
(5) NAVPERS 601-13, Administrative Remarks, 24 June 1969
(6) NAVPERS 2110/3, Naval Message, 18 July 1969
(7) BCNR Letter Docket No: NR20210005472, subj: Advisory Opinion ICO [Petitioner],
9 November 2021
(8) Petitioner's Counsel Letter, re: [Petitioner] (Docket No. NR20210005472),
29 November 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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to honorable; that his narrative reason for separation be changed to "Secretarial Authority"; that his separation code be changed to "JFF"; and that his reenlistment code be changed to "RE-1."

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2. The Board reviewed Petitioner's allegations of error or injustice on 14 January 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. 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 evidence 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 23 March 1966. See enclosure (2).

d. Between 1966 and 1969, Petitioner served three tours in Vietnam as an aircraft electrician. See enclosure (1).

e. On 5 February 1969, Petitioner and his roommate at the time were arrested by Japanese civilian authorities for violation of the [REDACTED] Marijuana Control Law. These authorities reportedly seizing 190 marijuana cigarettes and approximately seven grams of marijuana from their residence.¹ Petitioner reportedly had disposed of about 600 marijuana cigarettes before his arrest, and was in the process of disposing his remaining marijuana at the time. See enclosure (3).

f. On 13 March 1969, Petitioner admitted to using marijuana on "two or three occasions" in 1967 prior to his deployment to Vietnam. Upon his arrival in Vietnam for his first deployment, he found that marijuana was readily available and he purchased approximately 750 marijuana cigarettes from a fellow Sailor and a local national. Of these 750 cigarettes, he reportedly sent approximately 600 to his above referenced roommate. He also admitted to smoking marijuana during this deployment with three fellow Sailors. Petitioner further admitted to buying an additional 800 marijuana cigarettes from another local national during his second tour in Vietnam from 23 October 1968 to 6 December 1968, of which he sent approximately 700 to the same roommate. Petitioner stated that he smoked between five and 10 marijuana cigarettes per day while assigned to Danang province. Finally, Petitioner admitted to using lysergic acid diethylamide (LSD) with his roommate on two occasions in December 1968, and that he had previously used LSD once while back in the United States. See enclosure (3).

g. By memorandum dated 24 June 1969, Petitioner was notified that he was being considered for administrative separation from the naval service for the unauthorized use and possession of marijuana. See enclosure (4).

¹ According to his statement at enclosure (1), Petitioner received a suspended sentence and was never jailed or imprisoned in [REDACTED], but the [REDACTED] court order him and his roommate to leave [REDACTED]

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h. On 24 June 1969, Petitioner refused to request or waive any of the privileges associated with his proposed administrative separation action. See enclosure (5).

i. On 18 July 1969, the separation authority directed that Petitioner be involuntarily separated from the naval service with an undesirable discharge.² See enclosure (6).

j. On 31 July 1969, Petitioner was discharged from the Navy under other than honorable (OTH) conditions. See enclosure (2).

k. Petitioner, through counsel, contends that his discharge from the Navy was inequitable, and that his application should receive liberal consideration in accordance with reference (b) since his misconduct resulted directly from his depression and post-traumatic stress disorder (PTSD). He claims that his marijuana use was to self-medicate for his undiagnosed depression and PTSD, which stemmed from his service in Vietnam.³ He further claims that he did not use marijuana regularly prior to this deployment, but that afterwards he used it and over-the-counter Ritalin to manage and self-medicate his depression and PTSD. 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. The AO noted that there was no evidence that Petitioner was diagnosed with a mental health disorder during his military service, but that his statements are consistent with those that he rendered at the time of his offense. Accordingly, the AO found that "[i]t is plausible that [Petitioner] used marijuana as an anxiety management strategy following traumatic symptoms incurred during combat in Vietnam." It further found, however, that "the volume of marijuana described seems to be excessive for solely self-medication purposes." The AO also found that "[i]t is possible that the Petitioner utilized Ritalin ... to counter depressive symptoms that he was also experiencing," but that "[i]t is less reasonable that [Petitioner's] experimentation with LSD was related to self-medication of mental health symptoms." The AO ultimately concluded that "there is some evidence that the Petitioner may have incurred PTSD or another unfitting mental health condition during military service, but there is insufficient evidence that all of his misconduct could be mitigated by an unfitting mental health condition." See enclosure (7).

m. In response to the above referenced AO, Petitioner, through counsel, asserted that because the AO found that "there is some evidence that the Petitioner may have incurred PTSD or another unfitting mental health condition during military service," the Board should exercise its judgment and discretion in light of references (b) and (d) to determine that Petitioner incurred PTSD during his service and therefore grant his petition to upgrade his discharge. He countered the AO's observation that Petitioner's discharge physical did not reveal any mental health concerns by asserting that PTSD was not widely understood or diagnosed at the time. He further asserted that reference (d) provides that Petitioner's testimony alone may establish the existence of his PTSD condition. Finally, Petitioner's counsel stated that he had made efforts since receipt

² Petitioner's records do not include documents related to his administrative separation process following his refusal to elect or waive his rights. In the absence of evidence to the contrary, the presumption of regularity applies to establish that Petitioner's separation from the naval service was executed in accordance with applicable regulations.

³ Petitioner asserts that he was "boots on the ground" during the Tet Offensive, and was on base while the Viet Cong launched repeated mortars and rockets onto and near the base.

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of the AO to arrange an appointment for Petitioner with a clinical psychologist to support his petition, but that none would be available within the 30 days provided to respond to the AO.⁴⁵ See enclosure (8).

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.

Because Petitioner based his claim for relief in whole or in part upon his claimed PTSD condition and depression, the Majority reviewed his application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner’s claim that he suffered from PTSD and depression as a result of his military service and the effect that these conditions had upon the misconduct for which Petitioner was discharged. Based upon very liberal consideration, the Majority concurred with the AO that there was some evidence that Petitioner incurred PTSD as a result of his military service, and that his marijuana use could have been an “anxiety management strategy” to deal with his trauma symptoms. As such, Petitioner’s PTSD condition would mitigate the misconduct for which he was discharged.

In addition to applying liberal consideration to Petitioner’s claimed 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, among other factors, the mitigating effect of Petitioner’s mental health conditions upon the misconduct for which Petitioner was discharged, as discussed above; Petitioner’s multiple combat deployments to Vietnam, which reportedly involved exposure to combat during the Tet Offensive; the entirety of Petitioner’s naval record, which reflected the absence of other misconduct and his awards and decorations; Petitioner’s cooperation and transparency during the investigation of his misconduct; the non-violent nature of Petitioner’s misconduct and the fact that marijuana use carries less of a stigma today; Petitioner’s post-service contributions to society; Petitioner’s relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner’s discharge. Based upon the totality of the circumstances, the Majority determined that an upgrade to Petitioner’s characterization of service to general (under honorable conditions) is warranted in the interests of justice. While the Majority determined that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged to justify this relief, it did not believe that those mitigating circumstances so significantly outweighed Petitioner’s misconduct to warrant the extraordinary relief of an upgrade of Petitioner’s characterization of service to fully honorable as Petitioner requested. In this regard, the Majority noted the very large quantity of illegal drugs purchased by Petitioner, the fact that he distributed some of these drugs to his fellow service members, and that his initial use of

⁴ Petitioner’s case was not considered by the Board until 14 January 2022, 36 days after the 30-day suspense for the Petitioner to respond to the AO. No such documentation was received by the Board subsequent to the 30-day suspense.

⁵ The author of the above referenced AO reviewed Petitioner’s rebuttal, but determined that it provided no new information which would change her opinion.

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marijuana preceded the traumatic events which reportedly resulted in his PTSD condition. These circumstances offset those which weighed in favor of relief.

For the same reason that the Majority declined to recommend the upgrade of Petitioner's characterization of service to fully honorable, the Majority also determined that a change to Petitioner's narrative reason for separation and reenlistment code was also not warranted. The Majority found that the reason for Petitioner's separation was proper under the circumstances, and the mitigating circumstances did not so significantly outweigh the misconduct for which he was discharged to justify such additional relief.

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:

That Petitioner be issued a new DD Form 214 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 corrective action should be taken.

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 claimed mental health conditions and the effect that they may have had upon his misconduct in accordance with references (b) – (d). In this regard, the Minority did not question that Petitioner may have suffered from PTSD as a result of his service in Vietnam, or that this condition mitigated some of Petitioner's misconduct. However, the Minority believed that Petitioner's mental health condition(s) clearly did not outweigh the misconduct for which he was discharged. Specifically, the Minority noted that not only did Petitioner purchase and use on a daily basis massive amounts of marijuana, but that he also distributed marijuana to his fellow Sailors, used LSD for other reasons likely not attributable to his condition, and used drugs on multiple occasions prior to the traumatic events which might have triggered his PTSD condition.

The Minority, like 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). However, given that the Minority found that Petitioner's mental health condition(s) did not outweigh the misconduct for which he was discharged, the Minority did not believe that relief was warranted given the totality of the circumstances. The Minority found that the circumstances of Petitioner's misconduct, as described above, clearly outweighed all of the potentially mitigating circumstances, and therefore that his service and discharge were, and remain, properly characterized.

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MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommended 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.

2/8/2022



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade Petitioner's characterization of service to "General (under honorable conditions)"; No further changes)

MINORITY Recommendation Approved (Relief Denied)

Petitioner's Request Approved (Full Relief – Upgrade Petitioner's characterization of service to "Honorable"; Change Petitioner's narrative reason for separation to "Secretarial Authority," his separation code to "JFF," and his reenlistment code to "RE-1"; Issue Petitioner an Honorable Discharge certificate)

2/15/2022

