



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

██████████  
Docket No: 7231-21  
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 1966, Record of Military Processing – Armed Forces of the United States  
(3) DD Form 214  
(4) NAVPERS 1610/2, Evaluation Report & Counseling Record (E1-E6) (20020501 – 20020715)  
(5) NAVPERS 1610/2, Evaluation Report & Counseling Record (E1-E6) (20020522 – 20030715)  
(6) NAVPERS 1610/2, Evaluation Report & Counseling Record (E1-E6) (20030716 – 20040508)  
(7) NAVPERS 1070/607, Court Memorandum, 4 December 2020  
(8) NAVPERS 1070/601, Immediate Reenlistment Contract, 2 June 2005  
(9) NAVPERS 1070/607, Court Memorandum, 7 August 2006  
(10) Navy ██████████ CO Memo 1910 Ser N02L/301, subj: Administrative Discharge ICO [Petitioner], 13 July 2006  
(11) Department of Veterans Affairs Letter 320/SMNRT/JED, 19 December 2019  
(12) Department of Veterans Affairs Rating Decision, 6 May 2021  
(13) BCNR Letter Docket No: NR20210007231, 22 December 2021

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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.
2. The Board reviewed Petitioner's allegations of error or injustice on 21 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. On 8 February 2001, Petitioner was discharged from the U. S. Air Force (USAF) delayed entry program (DEP) due to a positive drug test for marijuana. See enclosure (2).
  - d. On 14 September 2001, Petitioner was granted local waivers to enlist in the Navy despite his discharge from the USAF DEP for drug use and two "non minor misdemeanors." See enclosure (2).
  - e. Petitioner began a period of active duty service in the Navy on 21 September 2001. See enclosure (3).
  - f. Between May 2002 to May 2004, Petitioner was forward deployed in support of Operations Enduring Freedom, Southern Watch-2, and Iraqi Freedom. His evaluation reports during these combat operations were very favorable and reflected significant potential, as well as the award of the Combat Action Ribbon (CAR). See enclosures (4) – (6).
  - g. On 20 December 2004, Petitioner received nonjudicial punishment (NJP) for being drunk on duty in violation of Article 134, Uniform Code of Military Justice (UCMJ). See enclosure (7).
  - h. On 2 June 2005, Petitioner reenlisted in the Navy for a period of five years. See enclosure (8).
  - i. On 8 June 2006, Petitioner received NJP for the wrongful use of marijuana in violation of Article 112a, UCMJ. See enclosure (9).

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[REDACTED] XXX-XX- [REDACTED]

j. By memorandum dated 16 June 2006, Petitioner was notified that he was being recommended for administrative discharge for misconduct due to drug abuse. See enclosure (10).

k. By memorandum dated 13 July 2006, Petitioner's discharge from the Navy under other than honorable (OTH) conditions for misconduct due to drug abuse was approved.<sup>1</sup> See enclosure (10).

l. On 2 August 2006, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (3).

m. By letter dated 19 December 2019, the Department of Veterans Affairs (VA) informed Petitioner that it had determined the entirety of Petitioner's naval service to be under honorable conditions for VA purposes. The VA based this determination on its conclusion that the two instances of misconduct in Petitioner's naval record were minor offenses. See enclosure (11).

n. On 6 May 2021, the VA awarded Petitioner a 30 percent service-connected disability rating for post-traumatic stress disorder (PTSD), with alcohol use disorder. The VA decision letter reflects that the examining psychologist linked Petitioner's PTSD diagnosis to his reported combat-related stressors. See enclosure (12).

o. Petitioner contends that his discharge was inequitable because his misconduct resulted from PTSD incurred from his experiences during prolonged combat operations during Operation Iraqi Freedom and Operation Enduring Freedom. See enclosure (1).

p. 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 although Petitioner's in-service records did not contain evidence of any mental health condition, he did provide evidence of a post-service diagnosis with PTSD and that Petitioner's drug use occurred after he was awarded the CAR. It also noted that Petitioner's records reflect a behavioral change following his exposure to combat which could be indicative of a mental health condition. The AO concluded that there is evidence that Petitioner exhibited behaviors associated with PTSD during his military service and that some of his misconduct may be mitigated by his PTSD condition. See enclosure (13).

#### MAJORITY CONCLUSION:

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

Because Petitioner based his claim for relief in whole or in part upon combat-related PTSD, his application was reviewed in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner's claimed PTSD condition and the effect

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<sup>1</sup> Petitioner's naval records do not include all of the documentation pertaining to his administrative separation proceedings. In the absence of evidence to the contrary, the presumption of regularity applies to establish that this procedure was properly executed and that Petitioner was afforded all of his due process rights.

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that it may have had upon his conduct. In this regard, the Majority found Petitioner's contentions to be very credible. His record reflected significant exposure to direct combat operations, a clear deterioration in his performance and conduct subsequent to this combat exposure, and misconduct of the type associated with PTSD. The Majority generally concurred with the findings of the AO, but believed that all of Petitioner's misconduct could be attributed to his PTSD condition since all of it occurred subsequent to Petitioner's combat exposure. The Majority believed that the AO was erroneous in its conclusion that Petitioner's PTSD would not mitigate the misconduct associated with Petitioner's first NJP, as his record reflects that his combat exposure preceded this misconduct. Accordingly, the Majority found that Petitioner's PTSD condition mitigated the misconduct for which he was discharged, and as a result his PTSD condition outweighed the misconduct for which he was discharged.

In addition to applying liberal consideration to Petitioner's PTSD condition and the effect that it may have had upon his conduct 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 PTSD condition upon the misconduct for which he was discharged, as discussed above; Petitioner's significant combat-related and otherwise meritorious service; that Petitioner developed PTSD as a result of his combat service, and presumably has continued to suffer its effects since his discharge; the relatively minor and non-violent nature of Petitioner's misconduct, and that only his use of marijuana during his most recent enlistment was appropriate for consideration in determining his characterization of service; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these considerations, the Majority believed that the mitigating circumstances far outweighed the relatively minor nature of Petitioner's misconduct, and that full equitable relief was therefore warranted in the interests of justice.

Although not specifically requested by Petitioner, the Majority also determined that Petitioner's narrative reason for separation and reentry code should be changed in the interests of justice to minimize the likelihood of negative inferences being drawn from Petitioner's naval service in the future.

Finally, the Majority noted that Petitioner's DD Form 214 does not include any reference to Petitioner's honorable service during his first enlistment. Accordingly, if the Majority's recommendation for full relief is not approved, this omission would represent an error which should be corrected.

#### 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 "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; that his separation code was "JFF"; and that his reentry code was "RE-1."

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That Petitioner be issued an Honorable Discharge certificate.

That the following statement be added to Block 18 of Petitioner's DD Form 214 if Petitioner's DD Form 214 is not corrected to reflect that his service was characterized as "Honorable":  
"CONTINUOUS HONORABLE ACTIVE SERVICE FROM 1 SEP 01 UNTIL 1 JUN 05."<sup>2</sup>

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 determined that partial relief is warranted in the interests of justice.

Like the Majority, the Minority also applied liberal consideration to Petitioner's claimed PTSD condition and the effect that it may have had upon his conduct 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 concurred with the Majority conclusion that there was sufficient evidence that Petitioner developed PTSD as a result of his combat experience and that this condition mitigated the conduct for which Petitioner was discharged. It disagreed with the Majority conclusion, however, that the mitigating circumstances so significantly outweighed Petitioner's misconduct to justify the extraordinary relief of an upgrade of Petitioner's characterization of service to fully honorable. The Minority noted that the misconduct for which Petitioner was discharged was similar to the pre-service conduct which necessitated Petitioner's enlistment waiver, which raised some doubt regarding whether the misconduct was fully attributable to his PTSD condition. Despite these concerns, the Minority found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, and that an upgrade of Petitioner's characterization of service to "General (under honorable conditions)" is appropriate under the totality of the circumstances. It did not, however, believe that a change to narrative reason for separation and/or reentry code was warranted in the interests of justice.

The Minority further concurred with the Majority that the absence of any reference to Petitioner's honorable service through his first enlistment was an error that should be corrected.

#### 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:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (Under Honorable Conditions)" and that the following statement be added to Block 18:  
"CONTINUOUS HONORABLE ACTIVE SERVICE FROM 1 SEP 01 UNTIL 1 JUN 05."

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<sup>2</sup> This correction will be unnecessary if Petitioner's characterization of service is upgraded to "Honorable."

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

That no further corrective action should be taken.

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.

2/15/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief – Upgrade to “Honorable”; Change Narrative Reason for Separation (and associated entries) to reflect “Secretarial Authority”; Change Reentry Code to “RE-1.”)

MINORITY Recommendation Approved (Partial Relief – Upgrade to “General (under honorable conditions)”; Add following statement to Block 18 of DD Form 214: “CONTINUOUS HONORABLE ACTIVE SERVICE FROM 1 SEP 01 UNTIL 1 JUN 05.”)

Board Recommendation Disapproved (Relief Denied – After careful review and consideration of all of the evidence of record, I do not concur with the Board conclusion that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged; Add following statement to Block 18 of DD Form 214: “CONTINUOUS HONORABLE ACTIVE SERVICE FROM 1 SEP 01 UNTIL 1 JUN 05.”)

3/18/2022

[REDACTED]

Assistant General Counsel (M&RA)

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