



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

██████████
Docket No: 7830-21
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 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) P601-7R, dtd 17 July 1998
(4) ██████████ Msg, subj: [Petitioner]/Recommendation for Admin Separation, dtg 101000Z Nov 98
(5) P601-6R, dtd 15 December 1998
(6) COMNAVAIRLANT ██████████ Msg, subj: Admin Discharge ICO [Petitioner], dtg 241637Z Nov 98
(7) Progress Notes, ██████████ 11 March 1999
(8) NDRB Discharge Review Decisional Document, Docket No. ND07-00619
(9) BCNR Letter Docket No: NR20210007830, subj: Advisory Opinion ICO [Petitioner], 4 January 2022

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" or, alternatively, that his narrative reason for separation be changed to a medical discharge.

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

2. The Board reviewed Petitioner's allegations of error or injustice on 11 February 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 included 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 24 March 1996. See enclosure (2).

d. On 7 July 1998, Petitioner received nonjudicial punishment (NJP) for two specifications of unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ),¹ and for one specification of missing movement in violation of Article 87, UCMJ.² See enclosure (3).

e. On 23 September 1998, Petitioner was notified that he was being considered for an administrative separation for misconduct due to commission of a serious offense, as evidenced by the misconduct which was the subject of his NJP, and for defective enlistment and induction by fraudulent entry as evidenced by his deliberate failure to reveal prior drug use. Petitioner waived his right to counsel and to request an administrative separation board. See enclosure (4).

f. On 8 October 1998, Petitioner again went UA. See enclosure (5).

g. By message dated 13 November 1998, Petitioner's command recommended that he be administratively discharged under other than honorable (OTH) conditions for misconduct due to commission of serious offenses and for defective enlistment and induction. See enclosure (4).

h. By message dated 24 November 1998, the separation authority directed that Petitioner be discharged under OTH condition in absentia for misconduct due to commission of a serious offense. See enclosure (6).

i. On 3 December 1998, Petitioner was discharged under OTH conditions in absentia for misconduct due to commission of a serious offense. See enclosure (2).

¹ Petitioner's first UA was from 12 May 1998 until 15 May 1998. His second UA was from 26 May 1998 to 25 June 1998.

² Petitioner missed movement on 26 May 1998.

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

j. On 17 January 1999, Petitioner was admitted for psychiatric treatment based upon “vivid hallucinations of red tinged skies, bloody babies, and other images which encouraged him to inflict [sic] harm to others.” It was also reported that Petitioner felt that his mother and family friends were posing as imposters. On 11 March 1999, Petitioner was diagnosed with schizophrenia.³ See enclosure (7).

k. On 29 November 2007, the Naval Discharge Review Board (NDRB) unanimously determined that no changes should be made to Petitioner’s discharge. In support of his request for relief to the NDRB, Petitioner claimed that his medical condition was not correctly diagnosed and that his discharge was therefore unfair. The NDRB found that Petitioner’s medical record were incomplete, and noted that Petitioner was scheduled for but missed a mental health appointment during one of his UA periods. See enclosure (8).

l. Petitioner contends that his discharge was inequitable. Specifically, he asserts that he served honorably for more than two years and was a model member of the Navy before his misconduct, and that his narrative reason for separation and characterization of service did not take this portion of his service into account. He explains that both of his UA periods were due to family emergencies. His first UA reportedly occurred when he learned that his father had developed dementia, while his second US reportedly occurred when his mother was sick and he departed to care for her and his ailing grandmother. Petitioner also contends that he was being bullied by his roommates, but that his complaints were ignored. Having been diagnosed with schizophrenia after his service, Petitioner contends that his misconduct can be directly correlated to this mental condition which was ignored by the Navy. See enclosure (1).

m. Petitioner’s application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board’s consideration. This AO noted that Petitioner provided evidence supporting a diagnosis for a psychotic disorder soon after his discharge. It further noted that although it cannot be concluded with absolute certainty, it would be reasonable to conclude that some of Petitioner’s misconduct could be linked to the prodromal symptoms of his post-discharge diagnosis with a psychotic disorder. The AO concluded that there is sufficient evidence that Petitioner exhibited behaviors associated with a mental health condition during his military service and that some of Petitioner’s misconduct may be mitigated by his mental health condition. See enclosure (9).

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.

Petitioner offered no evidence or explanation for why a medical discharge would have been appropriate under the circumstances. While he provided evidence suggesting that he suffered from the early onset of a mental health condition, he did not provide any evidence or claim that he was unfit to perform the duties of his office, rank, rating, or grade. To the contrary, Petitioner

³ Petitioner’s medical records reflect uncertainty regarding this diagnosis. Several other mental health providers had previously ruled out schizophrenia as a diagnosis, and later medical records reflect that providers struggled to determine whether Petitioner’s delusions were drug-induced or the symptom of a schizophrenic condition.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX-[REDACTED]

claimed that he was a model Sailor before he went UA. Accordingly, the Majority found no basis to grant Petitioner a medical discharge.

Because he based his claim for relief in whole or in part upon a mental health condition, Petitioner's application was reviewed in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his misconduct. In this regard, the Majority substantially concurred with the AO's conclusion that there is sufficient evidence that Petitioner likely was suffering the early effects of a psychotic disorder, and that that condition may have mitigated at least some of Petitioner's misconduct. Specifically, the Board noted that Petitioner presented symptoms consistent with a psychotic disorder within weeks of his discharge from the Navy. Although the medical evidence was not conclusive in this regard, the Majority found sufficient evidence of this condition based upon the application of liberal consideration. Additionally, the affidavit from Petitioner's mother suggested that his final UA, during which he was discharged in absentia, was directly related to his mental health condition.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and the effect that it 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 was 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 disorder on at least some of Petitioner's misconduct, as discussed above; Petitioner's claimed motivations for each of his first two UAs; Petitioner's contention that he was bullied by his roommates during his naval service; the entirety of Petitioner's naval career, to include the fact that his first couple of years were incident free; the non-violent nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Majority determined that equitable relief, in the form of an upgrade to Petitioner's characterization of service to general (under honorable conditions), is warranted in the interests of justice. For the same reason, the Majority determined that Petitioner's narrative reason for separation should be changed to "Secretarial Authority" to mitigate any future negative inferences being drawn from Petitioner's naval record.

The Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable as Petitioner requested, but determined that such extraordinary relief is not warranted under the totality of the circumstances. Specifically, the Majority noted that not all of Petitioner's misconduct was mitigated by a mental health condition. In fact, none of the misconduct for which his administrative separation was initiated was likely mitigated by the condition. Further, the Majority noted that Petitioner's medical records were not conclusive regarding whether Petitioner's delusional symptoms were induced by illicit drug use or the result of a psychotic disorder. The Majority ultimately determined that the mitigating circumstances did not so significantly outweigh Petitioner's serious misconduct to warrant the extraordinary relief of an upgrade of his characterization of service to fully honorable under the circumstances.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,
[REDACTED]

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 his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; and that his separation code was "JFF."

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 found insufficient evidence of any material error or injustice warranting relief.

The Minority also applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) – (d). In this regard, the Minority did not necessarily disagree with the findings of the AO that some of Petitioner's misconduct may have been mitigated by a mental health condition. However, even applying liberal consideration, the Minority found that the evidence suggested that Petitioner's first two UAs were not related to his mental health conditions. It was for these two UAs that Petitioner was discharged under OTH conditions, which the Minority found was clearly warranted under the circumstances. Accordingly, even though Petitioner's final UA may have been mitigated by his mental health disorder, the Minority found that none of Petitioner's relevant misconduct was so mitigated.

The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (e), but determined that such relief was not warranted. Given that the Minority did not find any of the relevant misconduct to have been mitigated by the onset of Petitioner's mental health condition, as discussed above, the Minority found that Petitioner's serious misconduct significantly outweighed all of the potentially mitigating circumstances. Accordingly, the Minority did not believe that equitable relief was warranted in Petitioner's case.

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.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED], USN,
[REDACTED]

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

3/3/2022



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to General (under honorable conditions); Change narrative reasons for separation and associated entries on DD Form 214 to reflect “Secretarial Authority.”)

MINORITY Recommendation Approved (Deny Relief)

Petitioner’s Request Approved (Full Relief -- Upgrade to Honorable; Change narrative reasons for separation and associated entries on DD Form 214 to reflect “Secretarial Authority.”)

3/25/2022

