



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

██████████  
Docket No: 0328-22  
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, 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 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 with attachments
  - (2) DD Form 214
  - (3) Counseling records
  - (4) Commander, Carrier Group ██████████, Letter of Commendation
  - (5) ██████████ CO Citation, 1 April 1995
  - (6) Letter of Commendation, Oct 95
  - (7) Report and Disposition of Offenses, 15 December 1995
  - (8) ██████████ Police Department Report, ██████████
  - (9) Report and Disposition of Offenses, 9 May 1996
  - (10) Petitioner's NJP Appeal (hand-written), rcvd 10 May 1996
  - (11) ██████████ CO Memo 1910 ██████████ subj: Notice of an Administrative Board Procedure Proposed Action, 21 May 1996
  - (12) ██████████ CO Memo 5812 ██████████ ██████████ First Endorsement of Enclosure (10), subj: Appeal of Nonjudicial Punishment ICO [Petitioner], 29 May 1996
  - (13) Carrier Group ██████████ CO Memo ██████████, Second Endorsement of Enclosure (10), subj: Appeal of Nonjudicial Punishment, 7 June 1996
  - (14) Administrative Discharge Board President Memo, subj: Report of an Administrative

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- Board in case of [Petitioner], undated
- (15) Petitioner's Counsel Memo 1910 Code 20, subj: Letter of Deficiencies ICO [Petitioner], 16 August 1996
  - (16) [REDACTED] CO Memo 1910 [REDACTED], First Endorsement of Enclosure (15), subj: Letter of Deficiencies ICO [Petitioner], 24 September 1996
  - (17) BUPERS Msg, subj: Admin Discharge ICO [Petitioner], dtg 111828Z Oct 96
  - (18) Petitioner's My HealthVet Personal Health Record, entry dtd 3 January 2013 @ 16:26:34
  - (19) Petitioner's My HealthVet Personal Health Record, entry dtd 13 April 2015 @ 9:22:14
  - (20) Department of Veterans Affairs Letter, 2 December 2021
  - (21) BCNR Memo Docket No: NR20220000328, subj: Advisory Opinion ICO [Petitioner], 10 February 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 an upgrade to his characterization of service.
2. The Board reviewed Petitioner's allegations of error or injustice on 11 July 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 interest 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 on 14 June 1993. See enclosure (2).
  - d. Between 12 December 1993 and 6 March 1996, Petitioner was formally counseled 18 times concerning a variety of infractions, to include substandard appearance, violating orders, and dereliction of duty. See enclosure (3).
  - e. Petitioner received a letter of commendation for outstanding performance as a Crash and Salvage Crewman during an aircraft fire onboard the [REDACTED] on 15 February 1995, in which he was credited with playing a key role in controlling a deck fire and allowing for the effective rescue of the aircrew. See enclosure (4).

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f. On 1 April 1995, Petitioner received a citation for outstanding performance on the Navy Physical Readiness Test. See enclosure (5).

g. Petitioner received another letter of commendation for outstanding performance as a Crash and Salvage Crew Member while deployed to the [REDACTED] onboard the [REDACTED] from April 1995 to October 1994, in which he was credited with maintaining a constant alert status and responding to over 80 flight deck emergencies to prevent aircraft damage, personal injuries or loss of life. See enclosure (6).

h. On 15 December 1995, Petitioner received nonjudicial punishment (NJP) for violating a lawful general order by lying in a bunk while wearing working clothes, in violation of Article 92, Uniform Code of Military Justice (UCMJ). His punishment included a one grade reduction and extra duties and restriction for 10 days, but that punishment was suspended for six months. See enclosure (7).

i. On 15 March 1996, Petitioner attempted to board an Alaska Airlines flight from [REDACTED] [REDACTED] using a ticket which had been reported as stolen by one of his shipmates.<sup>1</sup> Upon realizing that he had been discovered, he shoved an Alaska Airlines female employee to the ground in a futile effort to escape.<sup>2</sup> Petitioner was arrested, but the employee did not press charges for assault. See enclosure (8).

j. On 9 May 1996, Petitioner received NJP for the incident referenced in paragraph 3i above. He was charged with assault in violation of Article 128, UCMJ, and wrongfully receiving stolen property in violation of Article 134, UCMJ, but the latter charge was dismissed. His punishment consisted of extra duty and restriction for 45 days (15 days of each was suspended), forfeiture of \$490 pay per month for two months, and a reduction in grade. See enclosure (9).

k. On 10 May 1996, Petitioner appealed his NJP, asserting that the punishment was too harsh, as the assault for which he was found guilty was accidental and without intent. He admitted to a "lack of common sence [sic]" for buying a stolen ticket, but claimed to have repaid the victim of the theft. See enclosure (10). In his appeal, Petitioner contended he tried to walk out the door and his shoulder pushed into the flight attendant and she fell; he stated he did not intend to harm her. See enclosure (10).

l. By memorandum dated 21 May 1996, Petitioner was notified that he was being considered for administrative separation by reason of misconduct due to commission of serious offenses, as evidenced by "all punishment under the UCMJ during [his] current enlistment." See enclosure (11).

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<sup>1</sup> Petitioner claimed that he had purchased the ticket from another shipmate, not realizing that the ticket was stolen despite the fact that it was in the name of an individual other than the person from whom he claimed to have purchased the ticket.

<sup>2</sup> Petitioner claimed that he did not intend to harm the employee, but rather inadvertently shoved her in a panicked effort to get away.

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m. By memorandum dated 29 May 1996, the Commander [REDACTED] forwarded Petitioner's NJP appeal to the Commander, Carrier Group [REDACTED], recommending that the appeal be denied. See enclosure (12).

n. By memorandum dated 7 June 1996, the Commander, Carrier Group [REDACTED] denied Petitioner's NJP appeal. See enclosure (13).

o. On 7 August 1996, an administrative discharge board unanimously found by the preponderance of the evidence that Petitioner committed misconduct "as evidenced by the commission of a serious offense," and recommended that Petitioner be separated from the Navy under other than honorable (OTH) conditions. See enclosure (14).

p. By memorandum dated 16 August 1996, Petitioner, through counsel, submitted a letter of deficiencies regarding the administrative discharge board proceedings, requesting that the recommended characterization of service be changed to type warranted by Petitioner's service record as the board's recommendation was inconsistent with the testimony of the witnesses called during the hearing.<sup>3</sup> See enclosure (15).

q. By memorandum dated 24 September 1996, the Commander, [REDACTED] [REDACTED] forwarded the administrative discharge board report, along with Petitioner's letter of deficiencies, to the separation authority, recommending approval of the administrative discharge board's findings and recommendation. In making this recommendation, he stated that the opinions of witnesses was not binding on the administrative discharge board members. See enclosure (16).

r. By message dated 11 October 1996, the separation authority directed Petitioner's administrative discharge under OTH conditions. See enclosure (17).

s. On 21 October 1996, Petitioner was discharged from the Navy under OTH conditions for misconduct. See enclosure (2).

t. On 3 January 2013, Petitioner's initial evaluation for post-traumatic stress disorder (PTSD), conducted in the context of his Department of Veterans Affairs (VA) Compensation and Pension Examination Report, concluded that "[a]lthough [Petitioner] does not evidence symptoms of PTSD on all criteria, it appears reasonable to conclude that [his] anxiety symptoms and panic attacks were due to and the result of his repeated exposure to life threatening and traumatic emergencies as a member of the crash and salvage crew during his active duty in the Navy." The VA-affiliated provider who conducted the examination diagnosed Petitioner with Anxiety Disorder with panic attacks.<sup>4</sup> See enclosure (18).

u. On 9 April 2015, Petitioner was admitted for inpatient psychiatric treatment after expressing suicidal ideations to his primary care provider. Upon his discharge on 13 April 2015,

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<sup>3</sup> The two witnesses called by the Recorder reportedly recommended that Petitioner receive a General and Honorable discharge, respectively, while Petitioner's witness recommended that Petitioner be retained in the Navy.

<sup>4</sup> Petitioner later received a 30 percent service-connected disability rating related to this diagnosis.

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Petitioner was diagnosed with PTSD, mood disorder (unspecified), anxiety disorder, and panic disorder (with agoraphobia). See enclosure (19).

v. Effective 12 August 2017, the VA elevated Petitioner's combined service-connected disability rating to 100 percent.<sup>5</sup> See enclosure (20).

w. Petitioner contends that it was an injustice for him to be discharged under OTH conditions because of the PTSD condition for which he has since been assessed as 100 percent disabled by the VA. He attributes his misconduct to this condition, which he attributed to his traumatic experiences and a crash and salvage team member. See enclosure (1).

x. 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 informed the Board that Petitioner had been diagnosed with several conditions post-service through the VA, to include schizoaffective disorder (bipolar type), PTSD, panic disorder, and bipolar disorder II, and that he has been assigned a 100 percent disability rating by the VA. It also noted that the medical evidence provided reflects an increase in symptoms over time. For example, Petitioner did not meet the full diagnostic criteria for PTSD in 2013, when his symptoms most closely resembled an anxiety disorder with panic attacks,<sup>6</sup> but was later diagnosed with PTSD. Finally, the AO noted that Petitioner's VA medical records reflect that he reported that he had been arrested for battery after hurting a flight attendant when traveling by plane and "he wanted to get off the plane secondary to anxiety."<sup>7</sup> Petitioner's in-service records did not include any diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. Although his post-service records did include such diagnoses which the VA providers attributed to Petitioner's naval service, the AO opined that those records "did not provide sufficient evidence of markers of a mental health condition/PTSD during his military service" and that the records did not support the explanation for his misconduct that he reported to the VA providers. The AO ultimately concluded that the preponderance of available objective evidence failed to establish that Petitioner suffered from a mental health condition at the time of his military service, or that his in-service misconduct could be mitigated by a mental health condition. See enclosure (21).

y. In rebuttal to the above referenced AO, Petitioner offered the following contentions and comments:

(1) Petitioner described the danger and fear he constantly experienced as a crash and salvage crew leader, and the effect that it had upon his life. He claimed to have consulted with a Chaplain in an effort to change his job, due to the effect that his experiences were having on his behavior, sleep pattern, and constant state of fear.

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<sup>5</sup> It is not clear from the record which conditions were combined to reach this disability rating.

<sup>6</sup> This entry did, however, note that Petitioner's "repeated exposure to life threatening and traumatic emergencies as a member of the crash and salvage crew during his active duty in the Navy" contributed to his symptoms.

<sup>7</sup> This report does not match the contemporaneous police report of the incident, to include Petitioner's own statement made pursuant to that investigation.

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(2) Petitioner attributed his misconduct to his then-undiagnosed PTSD condition, and that he became a target on-board the ship when he tried to discuss the reason for his behavioral changes. He also claimed that the ship captain hated him due to an incident that occurred during a “cake cutting” event. Specifically, he stated that a photograph was taken of the two of them holding the knife with the sharp end up, and that the captain blamed him for the embarrassment that such a photograph would cause. He further claims that the captain’s bias against him was adopted by other officers on the ship, which was reflected in an “unreasonable amount of writes ups in paperwork.” Petitioner acknowledges that the cake cutting incident seems like something very minor which may seem to be grasping for something to support his explanation, but states that this incident started a “domino effect of attention” which, combined with the traumatic experiences associated with his job, contributed to the decline of his mental health.

(3) Petitioner then questioned why the captain would have become so angered at him over the cake-cutting incident, and suggests that the real source of his animus was racial.<sup>8</sup>

(4) Petitioner expressed confusion over the reference to disobeying orders in the AO, claiming that the only order which he recalled was one that he obeyed not to work out after his shift so that he would not fall asleep on duty. He also questioned how he could be assigned as a crew leader as an E-2 if he was actually as poor of a Sailor as the documentation in his record suggests.

(5) Regarding the stolen plane ticket, Petitioner insisted that he did indeed pay for the ticket and that the claim that he tried to run away upon discovery at the airport was inaccurate. He claims that his issue on the day in question was actually panic related to his then-undiagnosed mental health condition, which was related to his exposure to airplanes. He claims that he did not know why he was being surrounded and grabbed by people during this incident, and that he panicked under the circumstances. He noted that the airline employee that he allegedly assaulted never pressed charges because he apologized and explained the circumstances to her.

(6) Petitioner claims that the only inquiry into his mental health during the separation process was a question regarding whether he “heard voices.” He claims never to have received any tests or questions to assess him for PTSD or other related conditions.

(7) Petitioner contends that the administrative separation board was fixed, because all of the members were hand-picked friends of the captain and had their minds made up beforehand. He asserts that he simply went through the motions since he believed his separation to be inevitable. He also asserts that the Navy looked for any reason to administratively separate Sailors at the time in order to save money while his ship was in dry dock.

See enclosure (22).

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<sup>8</sup> Petitioner was of Asian ethnicity.

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## CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board disagreed with the findings of the AO and determined relief is warranted in the interests of justice.

Because Petitioner's claim for relief relied in whole or in part upon his claimed PTSD condition, the Board reviewed his application in accordance with references (b) – (d). Accordingly, the Board applied liberal consideration to his claimed PTSD condition and the effect that it may have had upon his conduct. Applying such consideration, the Board disagreed with the AO conclusion that there was insufficient evidence that Petitioner suffered from a mental health condition at the time of his military service or that this in-service misconduct could be mitigated by a mental health condition. Reference (d) provides that a determination made by the VA that a veteran's mental health condition, including PTSD, is connected to military service, is persuasive evidence that the condition existed during military service. As Petitioner noted, PTSD was not a well-known condition at the time of Petitioner's service. Further, as his traumatic experiences did not occur during combat, his PTSD symptoms could easily have been dismissed or overlooked under the circumstances. However, the Board found that Petitioner's duties as a crash and salvage crew leader were of a type that would expose him to significant traumatic experiences which could easily result in PTSD. The Board also found the specific traumatic events described by Petitioner, and the effects that he claimed that they had upon him, to be credible. Based upon the application of liberal consideration, the Board found, contrary to the AO, that there was sufficient evidence that Petitioner developed PTSD during and as a result of his military service.

The Board also disagreed with the AO conclusion that Petitioner's misconduct was not attributable to his mental health condition. In this regard, the Board notes that the charge of receiving stolen property was dismissed during the NJP proceedings. Accordingly, the only significant misconduct for which Petitioner was discharged was the assault charge in violation of Article 128, UCMJ. Given the circumstances, and applying liberal consideration in accordance with reference (d), the Board found sufficient evidence of a nexus between this misconduct and Petitioner's mental health condition. Specifically, the Board found reasonable and credible that Petitioner's reaction upon being discovered using a stolen ticket was partially the result of a panic reaction, which could be at least partially attributed to his condition. The Board did not find credible Petitioner's explanation that his reaction was attributed to a job-related fear and reaction to airplanes, as Petitioner had voluntarily flown on a stolen ticket prior to being discovered and his description of this event does not match the police reports recorded contemporaneously with the incident. However, it did believe that Petitioner had no mal-intent in assaulting the airline employee, and that his condition at least mitigated the severity of the misconduct for which he was discharged.

In addition to applying liberal consideration to Petitioner's claimed PTSD condition and the effect that it may have had upon his misconduct, the Board also considered the totality of the circumstances to determine whether relief is warranted in the interest of justice in accordance with reference (e). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's PTSD condition upon the misconduct for which he was discharged, as discussed above; that Petitioner developed PTSD as a result of his naval service and has likely

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suffered with the symptoms of this undiagnosed condition for many years since his discharge; that Petitioner performed dangerous and difficult duties while in the Navy, and that his efforts likely saved lives; that, apart from his misconduct, Petitioner appears to have been very good at his dangerous job, as evidenced by his commendations; that even the government witnesses at Petitioner's administrative separation board recommended more favorable dispositions than was ultimately recommended; 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 Board determined that equitable relief is warranted in the interest of justice. Specifically, the Board determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions). The Board did not believe an upgrade of Petitioner's characterization of service to fully honorable to be warranted based on the severity of the misconduct for which Petitioner was discharged, along with its doubt of Petitioner's claim that he attempted to flee for a job-related fear of airplanes. While the Board accepted that Petitioner's attempt to flee, resulting in his assault of the airline employee, was influenced by his service-connected condition, it also believed that that panic reflex was triggered by the realization that he was in potential legal jeopardy for using a stolen ticket and not a reaction to being in or around an airplane as he claimed.

RECOMMENDATION:

In view of the above, 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 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.

8/26/2022

[REDACTED]

Executive Director



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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Grant Relief – I approve the Board’s findings and recommendation as discussed above.)

Board Recommendation Approved (as modified) (Grant Relief – I approve the Board’s findings, but direct that Petitioner’s characterization of service be upgraded to fully honorable.)

Board Recommendation Disapproved (Deny Relief – I disapprove the Board’s findings and recommendation based upon the findings made by the AO. Accordingly, no corrective action shall be taken on Petitioner’s naval record.)

9/28/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]