



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

[REDACTED]
Docket No: 4346-22
Ref: Signature date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 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) NAVPERS 1070/604, Enlisted Qualifications History
(4) NAVPERS 1070/605, History of Assignments
(5) Memorandum for Record, subj: Commencement of Anthrax Vaccination, 23 July 1999
(6) NAVPERS 1070/613, Administrative Remarks, 24 September 1999
(7) Administrative Separation Processing Notice – Notification Procedure, 15 October 1999
(8) NDRB Discharge Review Decisional Document, Docket No. ND01-00373, 21 June 2001

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 discharge characterization be upgraded to honorable.

2. The Board reviewed Petitioner's allegations of error or injustice on 1 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 reference (b).

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.

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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 service on 25 March 1996. See enclosure (2).

d. Petitioner completed the 63-week Basic Arabic Language Course at the ██████████ ██████████, in November 1997, and the 20-week Joint Arabic Course at ██████████ in April 1998. See enclosure (3).

e. On 28 May 1998, Petitioner reported for duty with the Naval Security Group Activity in ██████████. See enclosure (4).

f. By memorandum dated 23 July 1999, Petitioner was directed to report to the ██████████ ██████████ Hospital no later than 1600 hours on 28 July 1999 to begin the anthrax vaccination immunization program as part of his assignment to a Direct Support Operations billet.¹ This memorandum noted that Petitioner had already failed to complete at least the first shot of the six-shot vaccination series, and that the department "views [Petitioner's] actions with great concern." It also informed Petitioner that failure to commence the vaccination program would result in disciplinary action. See enclosure (5).

g. On 24 September 1999, Petitioner was counseled for failing to report for the required anthrax vaccination program as ordered, in violation of Article 92, Uniform Code of Military Justice (UCMJ). He was ordered to start the six-shot anthrax vaccination series within two weeks of the issuance of the counseling statement, and was warned that further deficiencies in his performance and conduct would result in disciplinary action and/or processing for administrative separation. See enclosure (6).

h. On 15 October 1999, Petitioner was notified that he was being processed for administrative separation for misconduct due to commission of a serious offense based upon his refusal to receive the anthrax vaccination. Petitioner waived all of his rights associated with this action, and indicated that he did not intend to file an appeal. See enclosure (7).

i. On 23 November 1999, Petitioner was involuntarily separated from the Navy by reason of misconduct with a general (under honorable conditions) discharge and a RE-4 reentry code. See enclosure (2).

j. At the time of his discharge, Petitioner's overall performance trait average was 3.00, and his overall military behavior trait average was 3.25. See enclosure (8). Navy regulations in effect at the time of Petitioner's discharge required a minimum trait average of 2.0 for military behavior to be eligible for a fully honorable characterization of service.

¹ This order specified that all personnel who have the opportunity to deploy to the Southwest Asia region (Kuwait, Saudi Arabia, Bahrain, Jordan, Qatar, Oman, UAE, Yemen, and Israel) are required to being the immunization series prior to deployment in accordance with Navy and CINCUSNAVEUR regulations.

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k. On 15 June 2001 the Naval Discharge Review Board (NDRB) unanimously determined that no change should be made to the characterization of Petitioner's discharge. Petitioner had requested review of his discharge based on recent adjustments to the anthrax vaccination policy, and his belief that his discharge should reflect the quality of service he provided. He also requested that the NDRB consider the fact that he was selected to attend Officer Candidate School after his discharge. In denying Petitioner's request for relief, the NDRB noted Petitioner's excellent service record, but commented that there had been no official change in the Navy's anthrax vaccination policy as it applied to Petitioner. See enclosure (8).

l. Petitioner requests relief based upon the rescission of the policy in place at the time which required all forward deployed personnel to receive the anthrax vaccination. He also contends that he received many awards during his enlistment, including the Good Conduct Medal just six months prior to his separation. See enclosure (1).

MAJORITY CONCLUSION:

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

The Majority found no error or injustice in Petitioner's separation under honorable conditions based upon his violation of the order to initiate the anthrax vaccination program. Petitioner was required by regulation to receive the vaccination at the time, and violated direct orders to comply. He was properly notified of the initiation of administrative separation based upon this misconduct, and waived all of his rights pertaining to the separation process. Accordingly, there was no error or injustice in Petitioner's discharge under the circumstances.

In addition to reviewing the circumstances of Petitioner's discharge from the Navy under honorable conditions, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, that the anthrax vaccination policy has changed since Petitioner's discharge to mandate vaccination only for personnel specifically assigned to particular locations; Petitioner's otherwise meritorious service as reflected by his favorable performance and conduct trait averages; Petitioner's relative youth and immaturity at the time of his discharge; and the passage of time since Petitioner's discharge. In particular, the Majority noted that paragraph 6f of the attachment to reference (b) provides that "[c]hanges in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for relief." Petitioner would not have been required to initiate the anthrax vaccination program today merely due to the potential for a future deployment into theater. As such, he would reasonably expect a more favorable outcome under the same circumstances today. Accordingly, given the totality of the circumstances, the Majority believed that Petitioner's characterization of service should be upgraded in the interest of justice. The Majority did not, however, believe that any other relief was warranted under the circumstances.

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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 in the interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable."

That Petitioner be issued an Honorable Discharge certificate.

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 error or injustice warranting relief.

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge at the time it was administered.

The Minority did not concur with the Majority conclusion, however, that equitable relief was warranted in the interest of justice. The Minority also considered the totality of the circumstances in accordance with reference (b), but reached a different conclusion in this regard. In reaching its conclusion relief is not warranted based on the totality of circumstances, the Minority determined that any Sailor who blatantly violates multiple direct orders to comply with a valid Navy regulation would reasonably expect a similar outcome to what Petitioner received under similar circumstances today. The anthrax vaccination mandate in place at the time served a valid military purpose, and was applied only to forward-deployed personnel. Further, as a highly-trained Arabic linguist, Petitioner almost certainly would have been deployed into an area of responsibility for which the anthrax vaccination is required under current policy. Accordingly, the Minority did not find the subsequent modification of the anthrax vaccination policy a compelling reason to upgrade a discharge based upon multiple blatant violations of direct orders from superiors to comply with a valid policy. In addition to applying less weight to the subsequent change to the anthrax vaccination program than did the Majority, the Minority also noted that Petitioner provided no evidence of any post-service accomplishments or character references upon which equitable relief might be based. Finally, the Minority noted that Petitioner was involuntarily discharged from the Navy for willful misconduct. As such, the Minority found that Petitioner's characterization of service was, and remain, appropriate under the totality of the circumstances and the interests of justice do not warrant any relief.

MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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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.

07/23/2022

[REDACTED]

Executive Director

ACTING ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS)
DECISION:

MAJORITY Recommendation Approved (Grant Relief – As stated in Majority recommendation above)

MINORITY Recommendation Approved (Deny Relief)

9/12/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]