



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

█
Docket No. 4581-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX-XX-█ USMC

Ref: (a) 10 U.S.C. §1552
(b) USD (P&R) 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
(c) USD (P&R) 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) Standard Form 513, Medical Record – Consultation Sheet, 29 March 1984
(4) NAVPERS 1070/607, Court Memorandum, 27 June 1985
(5) NAVPERS 1070/613, Administrative Remarks, 8 July 1985
(6) █ Naval Construction Regiment CO Memo, subj: Counseling and Assistance Center Evaluation ICO [Petitioner], 10 June 1986
(7) NAVPERS 1070/607, Court Memorandum, 9 September 1986
(8) NAVPERS 1070/607, Court Memorandum, 29 October 1986
(9) NAVPERS 1070/613, Administrative Remarks, 2 December 1986
(10) Tactical Electronic Warfare Squadron █ CO Memo 1910 Ser 12/603, subj: Notice of an Administrative Board Procedure Proposed Action, 3 December 1986
(11) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of Privileges, 3 December 1986
(12) Tactical Electronic Warfare Squadron █ CO Memo 1910 Ser 12/614, subj: [Petitioner]; Recommendation for Separation due to MILPERSMAN 3630600, Misconduct – Pattern of Misconduct and Misconduct – Commission of a Serious Offense, 4 December 1986
(13) COMNAVMILPERSCOM Msg, subj: Misconduct Disch ICO [Petitioner], dtg 271424Z Jan 87
(14) BCNR Memo Docket No: NR20220004581, subj: Advisory Opinion ICO [Petitioner], 3 October 2022

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed

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enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that a discharge upgrade to honorable.

2. The Board reviewed Petitioner's allegations of error or injustice on 23 November 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) and (c).

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation 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 consider Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 9 March 1984. See enclosure (2).

d. On 29 March 1984, Petitioner was evaluated by a clinical psychologist due to "numerous disciplinary problems," but was diagnosed with no significant psychopathology. He was deemed "fully cognitive and aware," and assessed to know right from wrong with the ability to adhere to the right. See enclosure (3).

e. On 26 June 1985, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ).¹ He was reduced in rate by one grade and required to forfeit \$150 pay per month for one month.² See enclosure (4).

f. On 6 July 1985, Petitioner received his second NJP for UA in violation of Article 86, UCMJ,³ and for violating a lawful general regulation by wearing an earring in violation of Article 92, UCMJ. He was reduced in rate by one grade, required to forfeit \$150 pay per month for two months, and received 30 days of corrective custody.⁴ See enclosure (5).

g. On 4 June 1986, Petitioner was referred to the Counseling and Assistance Center (CAAC) after being UA and reporting to work under the influence of alcohol. The CAAC concluded that Petitioner did not appear to be alcohol dependent, but that he was at risk for further alcohol abuse unless he resolved his personal/family problems. See enclosure (6).

¹ Petitioner was charged with an UA of less than a 24-hour period.

² The reduction in rate and forfeiture of \$125 per month for one month was suspended for six months.

³ Petitioner was 10 minutes late for duty.

⁴ All adjudged punishment except for the correctional custody was suspended for six months.

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h. On 5 September 1986, Petitioner received his third NJP for UA in violation of Article 86, UCMJ;⁵ willful disobedience of a lawful order in violation of Article 91, UCMJ; and willful disobedience of a commissioned officer in violation of Article 92, UCMJ. He was reduced to the next inferior pay grade and required to forfeit \$100 pay per month for two months. See enclosure (7).

i. On 27 October 1986, Petitioner received his fourth NJP for failure to obey an order by leaving his barracks room while in a duty status and not leaving contact information with the duty officer in violation of Article 92, UCMJ, and UA in violation of Article 86, UCMJ.⁶ He was required to forfeit \$308 pay per month for two months and was reduced to the next inferior paygrade.⁷ See enclosure (8).

j. On 2 December 1986, Petitioner received his fifth NJP for failure to obey a lawful general regulation by wrongfully possessing an unregistered loaded shotgun in violation of Article 92, UCMJ; and for negligently discharging the shotgun onboard [REDACTED]. He received 45 days of restriction and 45 days of extra duty. See enclosure (9).

k. By memorandum dated 3 December 1986, Petitioner was notified that he was being considered for administrative discharge from the Navy for misconduct due to a pattern of misconduct and commission of a serious offense. See enclosure (10).

l. On 3 December 1986, Petitioner waived his right to consult with counsel and to request an administrative discharge board. See enclosure (11).

m. By memorandum dated 4 December 1986, Petitioner's commander recommended that he be administratively discharged from the Navy under other than honorable (OTH) conditions. In making this recommendation, he stated that Petitioner "has no potential for further Naval service" and that Petitioner's "pattern of minor infractions and [NJP], culminating in his most recent serious offense, negligently discharging a firearm, accurately indicate the trend of [Petitioner's] inservice performance." See enclosure (12).

n. By message dated 27 January 1987, the separation authority directed that Petitioner be administratively discharged from the Navy under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (13).

o. On 4 February 1987, Petitioner was discharged from the Navy under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (2).

p. Petitioner claims that he was having mental issues during his time in the Navy, when the term "post-traumatic stress disorder" (PTSD) was not used and when the military did not consider mental issues as a cause for misconduct. He claims to have been diagnosed by the Department of Veterans Affairs (VA) with anxiety issues, and has learned how to cope with his medical issues through counseling and being around positive individuals. He also asserts that he

⁵ Petitioner was 45 minutes late for duty.

⁶ Petitioner was in a UA status for less than an hour.

⁷ The forfeiture of pay was suspended for six months.

has lived a productive life, and seeks forgiveness for his past behavior. He apologized to the U.S. Navy, and promised to use the rest of his life giving back to other military personnel and veterans in any way that can be helpful. See enclosure (1).

q. Because Petitioner based his claim for relief in whole or in part upon his mental health condition(s), his 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 Petitioner provided evidence that he was awarded with a service-connected disability by the VA for an unspecified anxiety disorder. However, the AO also commented that the available records are not sufficiently detailed to establish any clinical symptoms or to provide a nexus with Petitioner's misconduct. The AO concluded that there is sufficient evidence that Petitioner suffered from a mental health condition (unspecified anxiety) that may be attributed to his military service, but there is insufficient evidence of any PTSD diagnosis or that Petitioner's misconduct could be attributed to a mental health condition.⁸ See enclosure (14).

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 interest of justice.

The Majority found no error or injustice in Petitioner's discharge under OTH conditions for misconduct due to a pattern of misconduct at the time that it was administered. It appears that the Navy complied with all procedural requirements pertaining to such discharges, and no questions were raised regarding the legitimacy of the numerous NJPs or their underlying acts of misconduct which supported the pattern of misconduct for which Petitioner was discharged.

Because Petitioner based his claim for relief in whole or in part upon his claimed mental health condition(s), the Majority reviewed Petitioner's application pursuant to the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition(s), and the effect that they may have had upon the misconduct for which he was discharged. In this regard, the Majority concurred with the AO's conclusion that there was sufficient evidence that Petitioner suffered from an unspecified anxiety disorder while in the Navy. The Majority disagreed with the AO's conclusion, however, that there was insufficient evidence that this mental health condition mitigated the misconduct for which he was discharged. While acknowledging that the evidence of any nexus between Petitioner's mental health condition and misconduct was limited, in applying very liberal consideration the Majority believed it plausible that at least some of the misconduct for which Petitioner was discharged could have been mitigated by Petitioner's anxiety disorder. As so much of Petitioner's misconduct was very minor in nature, the Majority believed it possible that his anxiety could have contributed to such behavior. Even applying liberal consideration, however, the Majority could find no evidence that Petitioner suffered from PTSD while in the Navy. While Petitioner indicated in block 13 of his application that his request was related to PTSD and referenced PTSD in block 14, he never actually claimed to have suffered from or been diagnosed with PTSD, and he offered no explanation of how or why such a condition would have developed.

⁸ A copy of the AO was provided to Petitioner for comment, but he did not respond.

In addition to applying liberal consideration to Petitioner's claimed mental health condition(s) and the effect that they may have had upon his misconduct in accordance with reference (b), 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 (c). In this regard, the Majority considered, among other factors, the mitigating effect of Petitioner's mental health condition upon at least some of the misconduct for which he was discharge, as discussed above; the letters of support provided by Petitioner's colleagues attesting to his favorable character, reputation, and volunteer work in his community; the non-violent and relatively minor nature of the misconduct for which Petitioner was discharge; Petitioner's sincere remorse and apology for his behavior while in the Navy; Petitioner's expressed desire to serve military personnel and veterans; 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 determined that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, and that an equitable upgrade of his characterization of service to general (under honorable conditions) was therefore warranted. The Majority did not, however, believe that the mitigating circumstances so significantly outweighed Petitioner's frequent and persistent misconduct to warrant the extraordinary relief of an upgrade of his service characterization to fully honorable as he requested.

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 "General (under honorable conditions)." All other entries on the DD Form 214 should remain unchanged.

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 determination that there was no error or injustice in Petitioner's discharge under OTH conditions at the time that it was administered.

Like the Majority, the Minority also applied liberal consideration to Petitioner's claimed mental health condition(s) and the effect that they may have had upon the misconduct for which he was discharged in accordance with reference (b). While the Minority concurred with the Majority conclusion that there was sufficient evidence that Petitioner may have suffered from an anxiety disorder at the time of his service, it did not concur with the Majority conclusion that there was sufficient evidence that this condition may have mitigated any of the misconduct for which

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Petitioner was discharged. In this regard, the Minority concurred with the AO that there simply was no evidence of any nexus between Petitioner's mental health condition and his misconduct, and found the Majority conclusion in this regard to be speculative at best. The Minority agreed with the Majority that there was insufficient evidence to conclude that Petitioner suffered from PTSD during his military service, but could identify no logical connection between the misconduct for which Petitioner was discharged and either PTSD or an anxiety disorder.

The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (c). In this regard, the Minority considered the same potentially mitigating factors as did the Majority. Having reached a different conclusion regarding the mitigating effect of Petitioner's mental health condition(s), however, the Minority found these mitigating factors to carry significantly less weight than did the Majority. Accordingly, the Minority found that the extensive and persistent misconduct for which Petitioner was discharged far outweighed all of the mitigating factors which might weigh in favor of equitable relief, and that OTH discharge was, and remains, appropriate under the totality of the circumstances.

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

12/21/2022

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and direct the relief recommended by the Majority above.)

MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and direct that no corrective action be taken on Petitioner’s naval record.)

Petitioner’s Request Approved (Full Relief – I generally agree with the Majority conclusion that equitable relief is warranted under the totality of the circumstances, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Rather, I believe that the mitigating circumstances so significantly outweigh the minor misconduct for which Petitioner was discharge to justify an upgrade of Petitioner’s characterization of service to fully honorable. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service was characterized as “Honorable,” and that he be issued an Honorable Discharge certificate.)

2/7/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]