



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

[REDACTED]
Docket No: 5307-22

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) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 narrative reason for separation be change to either "Secretarial Authority" or "Condition Not a Disability" and that his reentry code be changed to "RE-1." Enclosure (1) applies.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 August 2022, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include the references.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. Prior to enlisting in the Navy, Petitioner received mental health treatment and was prescribed Prozac from September 2002 – January 2003; however, during his enlistment physical on 29 August 2003, he indicated "no" to all mental health responses and did not submit any additional statement or sign his "Moment of Truth" certification that same day. He began a period of active duty on 24 November 2003. However, on 3 December 2003, Petitioner was seen by medical for complaints of shoulder pain. During this care, Petitioner's medical record noted a reported history of depression. A consultation request to mental health confirmed that Petitioner reported a previously undisclosed history of depression as well as having been

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prescribed Prozac for approximately “8 months” prior to recruit training. Additionally, this consultation noted that the patient did not want to be in the Navy and wanted to go home.

c. On 11 December 2003, Petitioner received a psychiatric evaluation which again noted his prior treatment and symptoms. The examining physician additionally documented that Petitioner had been noncompliant with his medication and had discontinued it against the advice of his civilian provider. The military provider diagnosed Petitioner as having the disqualifying psychiatric condition of recurrent Major Depressive Disorder (MDD) and, based on the opinion that he posed an increased risk if retained, recommended separation.

d. Petitioner was processed for administrative separation for the reasons of fraudulent enlistment due to his failure to disclose prior psychiatric treatment and erroneous enlistment evidenced by his disqualifying diagnosis of MDD. Accordingly, Petitioner was discharged on 22 December 2003 in an entry-level status, with uncharacterized service for the narrative reason of fraudulent entry into military service, and assigned an “RE-4” reentry code.

e. Petitioner contends through counsel that his narrative reason for separation is unjust because he lacked the intent to commit fraud at the time he denied his mental health history because he was acting as directed by his recruiter without realizing the import of following those instructions. In support of this contention, Petitioner provided a witness statement from a fellow recruit who was present at the time he applied to enlist and who confirms Petitioner’s allegation regarding the recruiter’s direction that Petitioner not report his mental health history. Additionally, Petitioner contends first, that the decision to separate him for his MDD relied on erroneous facts, to include that he did not receive counseling or take medication for the duration indicated by his records, and second, that the MDD diagnosis reflects a disqualifying medical condition, not amounting to a disability, for which the current directives as of 2018 now require the endorsement of a medical board prior to separating a service member with his diagnosis. Petitioner believes that his discharge without a medical board endorsement constitutes procedural error.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner’s request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in the references.

Noting first that subsequent changes to procedural regulations do not create a springing error with respect to prior decisions properly made and executed under earlier regulations applicable at the relevant time of the decision, the Board found no error in the procedures of Petitioner’s administrative separation. Additionally, given that Petitioner admits his mental health condition pre-existed his active duty service, the Board observed no injustice in his administrative discharge processing due to a disqualifying medical condition which was neither incurred during nor aggravated by his notably brief active military service.

Regarding Petitioner’s final narrative reason for separation of fraudulent enlistment, although the Board acknowledged that Petitioner clearly knew of his pre-service mental health treatment and

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did not report it at the time of his enlistment physical, the Board considered the significant influence of Petitioner's recruiter, noting that an eye-witness credibly observed Petitioner report his mental health history to the recruiter and the recruiter coached Petitioner not to relay that information during his enlistment physical. In light of this evidence, the Board found that the narrative reason of "fraudulent enlistment" as well as the resulting reentry code of "RE-4" to have an inequitable effect. Accordingly, the Board determined that it is in the interest of justice to change the narrative reason for separation to Secretarial Authority along with associated changes to the separation authority, separation code, and RE-code.

The Board concluded that assigning Petitioner a RE-1 code was not supported by the evidence based on his medical history. The Board determined a RE-8 code was more appropriate since it covers temporary medical conditions of recruits assigned for initial training.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that for the period ending 22 December 2003, his entry-level discharge was issued for the narrative reason of "Secretarial Authority," separation authority of "MILPERSMAN 1910-164," separation code of "JFF," and a reentry code of "RE-8."

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in 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-entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

9/8/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]