



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

██████████
Docket No. 1564-23
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) 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 (19840509 – 19880401)
(3) DD Form 4/1, Enlistment/Reenlistment Document, Armed Forces of the United States, 9 June 1988
(4) NAVPERS 1070/615, Record of Discharge from the U.S. Navy Reserve, 28 May 1990
(5) DD Form 214 (19900426 – 19960227)
(6) NAVPERS 1070/605, History of Assignments
(7) Optional Form 275, Narrative Summary, 17 April 1995
(8) Report of UA (19950123 – 19950208)
(9) Report of UA (19950503 – 19950904)
(10) ██████████ Special Court-Martial Order No. 13-95, 13 December 1995
(11) ██████████ CO Memo 1910 Ser 001A10/8460, subj: Notice of an Administrative Board Procedure Proposed Action, 13 November 1995
(12) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 15 November 1995
(13) ██████████ CO Memo 1910 Ser 00A00/8466, subj: Recommendation for Separation by Reason of Misconduct ICO [Petitioner], 13 November 1995
(14) BUPERS Memo 1910 Ser 832, subj: [Petitioner], undated
(15) BCNR Memo Docket No: NR20230001564, subj: Advisory Opinion ICO [Petitioner], 7 June 2023

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

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Board, requesting that his characterization of service be upgraded to general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 4 August 2023 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. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board 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. Petitioner enlisted in the Navy and began a period of active duty service on 9 May 1984. On 1 April 1988, he was honorably discharged prior to the expiration of his term of service for the convenience of the government.¹ See enclosure (2).

c. On 9 June 1988, Petitioner enlisted in the U.S. Navy Reserve (USNR) in the grade of E-5 for a period of five years. See enclosure (3). However, it appears from the record that Petitioner was honorably discharged from the USNR in April or May 1990 to reenlist in the Regular Navy.² See enclosure (4).

d. On 26 April 1990, Petitioner began a second period of active duty service in the Regular Navy. See enclosure (5).

e. In early 1991, Petitioner deployed to [REDACTED] for a relatively short period, during which time he operated remote mine sweepers in the [REDACTED].³ During a mental health evaluation conducted in 1995, he reported being exposed to a good deal of smoke and smog from burning oil fires during this period, and that he subsequently found himself with a shortness of breath upon exertion after his return from [REDACTED]. See enclosure (7)

f. Petitioner was in an unauthorized absence (UA) status from 23 January 1995 until he voluntarily surrendered to military authorities on 8 February 1995. See enclosure (8).

¹ Petitioner had attained the grade of E-5 by the time of this discharge.

² The record is unclear regarding precisely when Petitioner was discharged from the USNR. While enclosure (4) reflects that Petitioner was honorably discharged from the USNR and recommended for reenlistment on 28 May 1990, enclosure (5) reflects that Petitioner began serving on active duty in the Regular Navy on 26 April 1990. It also credits Petitioner with continuous honorable active service from 25 July 1988 until 25 April 1990, during which time he would have been in the USNR. Adding to the confusion, enclosure (6) reflects that Petitioner reenlisted for a period of six years on 26 March 1990, at which time he was assigned to a Special Warfare unit. The Board presumes an error in the USNR discharge date reflected on enclosure (4), and that Petitioner was actually discharged from the USNR on or about 25 April 1990 to reenlist in the Regular Navy on effective 26 April 1990.

³ Petitioner received the Navy Commendation Medal for this service.

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g. On 6 March 1995, Petitioner was admitted to the Mental Health Clinic (MHC) at [REDACTED] [REDACTED] for severe depression and suicidal ideation, where he remained for treatment until his discharge on 17 April 1995. Prior to this admission, he reported experiencing occasional lapses in his awareness of the surroundings.⁴ Upon his discharge from the MHC, Petitioner was diagnosed with Major Depressive Episode (Nonpsychotic, Seasonal), and Dysthymia, and was returned to duty without any limitations. See enclosure (7).

h. On 3 May 1995, Petitioner began a second period of UA, which terminated upon his apprehension by civilian authorities and return on military control on 6 September 1995. See enclosure (9).

i. Upon his return from this second period of UA, Petitioner was administered a urinalysis and tested positive for the use of cocaine. See enclosure (10).

j. On 17 October 1995, Petitioner was convicted by a special court-martial (SPCM), pursuant to his pleas, of two specifications of UA in violation of Article 86, Uniform Code of Military Justice (UCMJ),⁵ and the wrongful use of cocaine in violation of Article 112a, UCMJ. He was sentenced to 85 days of confinement, forfeiture of \$500 pay per month for two months, and to be reduced in grade to E-5.⁶ See enclosure (10).

k. By memorandum dated 13 November 1995, Petitioner was notified that he was being processed for administrative separation from the naval service by reason of misconduct due to commission of a serious offense and drug abuse. Petitioner's plea, and the results of the SPCM, were cited as the evidentiary basis of these allegations of misconduct. See enclosure (11).

l. On 13 November 1995, Petitioner waived all of his rights pertaining to the administrative separation board process. See enclosure (12).

m. By memorandum dated 13 November 1995, Petitioner's commander recommended that Petitioner be administratively separated from the Navy under other than honorable (OTH) conditions for misconduct due to commission of a serious offense and drug abuse.⁷ See enclosure (13).

n. On 13 December 1995, the convening authority approved the SPCM sentence as adjudged, but suspended that portion of the adjudged confinement in excess of 80 days for a period six months from the date that the sentence was adjudged. See enclosure (10).

⁴ For example, he reported one episode after his return from UA wherein he woke up in the morning and was taking a shower, shaving, and laying out his uniform, and the next thing he remembered was waking up in his truck parked at a grocery store parking lot at approximately 1600 hours.

⁵ These two specifications were for the UAs discussed in paragraph 3f and 3h above.

⁶ It appears from the record that Petitioner entered into pretrial confinement upon his return to military control. His medical record includes an entry dated 7 September 1995, for "Brig Indoc[trination]" at [REDACTED].

⁷ This recommendation revealed that the command was aware of personal problems between Petitioner and his spouse. It also described Petitioner's work performance prior to his UA as "above reproach." Finally, it revealed that Petitioner waived his right to counsel against the advice of the command, and that his SPCM defense counsel was made aware of this decision.

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o. The Chief of Naval Personnel subsequently recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that Petitioner be administratively separated from the Navy under OTH conditions.⁸ See enclosure (14).

p. On 5 February 1996, the ASN (M&RA) approved the recommendation that Petitioner be discharged from the Navy under OTH conditions. See enclosure (14).

q. On 27 February 1996, Petitioner was discharged from the Navy under OTH conditions for misconduct. See enclosure (2).

r. In his hand-written request for relief, Petitioner contends that “[e]verything started going down hill when [he] came back from [REDACTED] ... doing remote control mine sweeping operations during the war,” and stated that it “[j]ust seemed like something hit [him] like a ton of bricks.” He claimed to be able to handle his depression “by staying busy going to different duty stations but it just got to be to [sic] much.” He found himself “isolated and alone not being able to concentrate on anything, had a useless feeling and nobody to talk to.” At one point, it got so bad that he considered suicide, so he went UA to go back home. After his family talked him into going back to the Navy, he received no help and eventually attempted suicide. After his discharge from inpatient treatment at the [REDACTED] MHC, his command put him right back on duty in a job he could not do, so he again went UA. He claims that his use of cocaine while on UA was self-medication, “just trying to feel some sort of normal.” Petitioner asserts that he had a successful career until his experience in [REDACTED] (which he states that he can’t talk about). He believes that “mental health should have stepped in and gave [him] a physical review board.” Petitioner’s application is supported by letters from his mother and a lifelong friend, attesting that Petitioner was changed from his experience in [REDACTED]. See enclosure (1).

s. Petitioner’s application and records were reviewed by a licensed clinical psychologist, who provided an advisory opinion (AO) for the Board’s consideration. The AO found that Petitioner was diagnosed with a mental health condition while in the Navy, and that his first period of UA was considered to be related to that mental health condition. However, it found that the available records were not sufficiently detailed to establish a nexus between his mental health condition and his second period of UA, “as it seems unusual that a Major Depressive Episode would spontaneously improve with a change of location.” Accordingly, the AO found that there was sufficient evidence of a mental health condition attributable to Petitioner’s military service, but insufficient evidence to attribute all of Petitioner’s misconduct to that condition. See enclosure (15).

CONCLUSION:

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

The Board found no error in Petitioner’s discharge at the time that it was administered. The legitimacy of Petitioner’s misconduct is not in doubt, as he pled guilty to that misconduct at his

⁸ The separation authority was elevated to the ASN (M&RA) because the SPCM did not adjudge a punitive discharge for the same misconduct which served as the basis for Petitioner’s administrative separation.

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SPCM and was convicted by proof beyond a reasonable doubt. Further, Petitioner's misconduct was of sufficient severity to justify the characterization of service that he received, as his offenses qualified for a punitive discharge. There also does not appear to be any deficiencies in the procedures utilized to administratively separate Petitioner from the Navy under OTH conditions. He was properly notified that he was being considered for administrative separation for misconduct due to commission of a serious offense and drug abuse, as evidenced by the results of his SPCM. He was also placed on notice that the least favorable potential characterization of his service was OTH. Having been properly notified of the pending administrative separation procedures and the least favorable possible result, Petitioner waived all of his rights in that regard. Finally, the approval authority for his OTH characterization of service was properly elevated to the Secretarial level since Petitioner was discharged for the same misconduct for which a SPCM failed to adjudge a punitive discharge. Accordingly, there was nothing erroneous about Petitioner's discharge from the Navy under OTH conditions.

Because he based his claim for relief upon the mental health symptoms that he developed following his deployment to [REDACTED], Petitioner's application was reviewed in accordance with the guidance of reference (b). Accordingly, the Board applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon the misconduct for which he was discharged. In this regard, the Board need not have applied liberal consideration to find that Petitioner suffered from depression during the relevant time period. He spent more than a month in in-patient treatment for severe depression immediately following return from his first period of UA and was diagnosed with a Major Depressive Episode and Dysthymia. Accordingly, the existence of this condition during the relevant time period, and its relative severity requiring approximately six weeks of inpatient mental health treatment, is not in doubt. Although the AO at enclosure (15) found insufficient evidence of a nexus between Petitioner's second period of UA (and by extension the substance abuse in which he engaged during this UA), the Board found that all of Petitioner's misconduct could reasonably be attributed to this condition through the application of liberal consideration.⁹ The AO found a nexus between Petitioner's first period of UA and his mental health condition. Applying liberal consideration to Petitioner's application, the Board found it reasonable that there would be a similar nexus with Petitioner's second period of UA as well. This second period of UA began just two weeks after Petitioner's discharge from the [REDACTED] MHC, to which he had been admitted less than a month after his return from his first period of UA. It seems obvious that the same depression which contributed to his first period of UA would also have contributed to his second period of UA under these circumstances. Further, the Board found it reasonable that Petitioner would engage in substance abuse to self-medicate for the relatively severe depressive symptoms that he described. Accordingly, the Board found that Petitioner's misconduct was mitigated by his depressive condition.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon the misconduct for which he was discharged in accordance with reference (b), the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Board considered, among other factors, the mitigating effect of Petitioner's

⁹ The Board notes that the author of the AO did not apply liberal consideration to her review of Petitioner's application. Per reference (b), that is the responsibility of the Board.

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mental health condition upon the misconduct for which he was discharged, as discussed above; that the SPCM did not adjudge a punitive discharge, despite the severity of the misconduct for which Petitioner pled guilty; the entirety of Petitioner's naval record, which included combat service in [REDACTED] which apparently triggered Petitioner's mental health symptoms, and which was otherwise meritorious and honorable until the onset of those symptoms; that Petitioner's command described his work performance prior to his UAs as "above reproach" in enclosure (13); that Petitioner was apparently changed by his experience in [REDACTED], as evidenced by the letters from his mother and life-long friend, and that he continues to be affected by the mental health condition that he developed as a result of that experience; Petitioner's acceptance of responsibility for his misconduct, as evidence by his guilty plea; the relatively minor and non-violent nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. In this regard, the Board notes that the ASN (M&RA) was not fully apprised of the Petitioner's mental health symptoms in the request to separate Petitioner from the Navy under OTH conditions which was forwarded to him. While the military judge presiding over Petitioner's SPCM would likely have known of Petitioner's depression and did not believe that a punitive discharge was warranted under the circumstances, the ASN (M&RA) was informed only of Petitioner's diagnoses without any elaboration. While Petitioner contributed to this lack of information by waiving his right to submit matters for consideration, that waiver is also understandable given Petitioner's mental state at the time. Regardless of the reason, it was apparent to the Board that the decision to characterize Petitioner's service as OTH was not fully informed regarding Petitioner's mental health condition following his combat deployment to [REDACTED]. The mitigating effect of Petitioner's mental health condition upon his misconduct, combined with the other factors discussed above, convinced the Board that Petitioner's characterization of service should be equitably upgraded to general (under honorable conditions) in the interests of justice.

Although not specifically requested by the Petitioner, the Board considered whether an upgrade of Petitioner's characterization of service to fully honorable, or any other equitable relief, was warranted. However, despite finding that the mitigating circumstances described above sufficiently outweighed the severity of Petitioner's misconduct to justify the relief he requested, the Board did not find those mitigating circumstances to so significantly outweigh the severity of Petitioner's misconduct to justify such extraordinary relief beyond that specifically requested.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his period of active service ending on 27 February 1996 was characterized as "General (under honorable conditions)." All other entries reflected in his current DD Form 214 are to remain unchanged, subject to the additional recommendation below.

Given the confusion in the record regarding Petitioner's active and reserve service dates, as discussed in footnote 2 above, that Naval Personnel Command conduct a review of Petitioner's service record to confirm the correct beginning and end dates of his various periods of reserve,

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activate reserve, and active duty service, and take corrective action as appropriate to ensure that his various periods of service are accurately characterized.

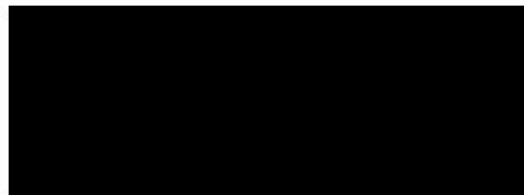
That a copy of this record of proceedings be filed in Petitioner's naval record.

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.

9/5/2023



ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

Board Recommendation Approved (Full Relief – I concur with the Board's conclusion and therefore direct the relief recommended above.)

Board Recommendation Disapproved (Deny Relief – I do not concur with the Board's conclusion. Specifically, I do not find the mitigating circumstances sufficient to justify the relief requested. Accordingly, I direct that no corrective action be taken on Petitioner's naval record except that necessary to ensure that Petitioner's periods of active and reserve duty are accurately reflected in his record.)



Date: 10/24/23