



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

██████████  
Docket No. 4918-23  
7841-17

Ref: Signature Date

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

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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) DODD 1332.18, Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability, 9 September 1968  
(d) 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  
(e) BUPERSINST 1900.2C, Armed Forces of the United States Report of Transfer or Discharge, DD Form 214 (Rev 1 Nov 1955); instructions for the preparation and distribution of, 13 April 1964

Encl: (1) Remand Order, in the case of *[Petitioner] v. United States of America*, in the United States Court of Federal Claims, Case No. ██████████, filed 9 May 2023  
(2) DD Form 149 with enclosures  
(3) Joint Motion for Remand, in the case of *[Petitioner] v. United States of America*, in the United States Court of Federal Claims, Case No. ██████████, filed 28 April 2023  
(4) Supplemental Remand Brief in Support of Application for Correction of Military Record under 10 U.S.C. § 1552, *In the Matter of [Petitioner]*, before the Board for Correction of Naval Records, Dkt. No. 7841-17, 8 June 2023  
(5) Administrative Record Index, *[Petitioner] v. U.S.*, No. 19-1964 (Fed. Cl.)  
(6) Psychiatric Evaluation of [Petitioner] by Dr. ██████████, *In the Matter of [Petitioner]*, before the Board of Correction of Naval Records, 13 September 2017  
(7) Secretary of the Navy Council of Review Boards Memo 1910 CORB: 002, subj: Request for comments and Recommendations ICO [Petitioner], 20 September 2018  
(8) Response to Advisory Opinion Dated September 20, 2018, *In the Matter of [Petitioner]*, before the Board of Correction of Naval Records, Dkt. No. 7841-17, 2 November 2018 (with attachments)  
(9) DD Form 214  
(10) NAVMED 1406, Abstract of Service and Medical History  
(11) NAVPERS 601-9, Enlisted Performance Record

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- (12) NAVPERS 792, Report of Enlisted Performance Evaluation
- (13) [REDACTED] CO Memo [REDACTED] 5730 Ser 695, subj: Congressional correspondence in the case of [Petitioner]; information concerning, 19 April 1987
- (14) Petitioner's Father's Letter to Senator [REDACTED], 31 March 1967
- (15) NAVPERS 601-13, Administrative Remarks
- (16) [REDACTED] News Journal, *Heroism recalled 50 years after deadly fire aboard* [REDACTED], published 11:34 PM ET July 29, 2017
- (17) NAVPERS 601-13, Administrative Remarks
- (18) Petitioner's Father's Letter to Senator [REDACTED], 31 August 1968
- (19) NAVPERS 601-6, Court Memorandum, 17 June 1968
- (20) Standard Form 600, Health Record – Chronological Record of Medical Care, 15 August 1968
- (21) BUMED Letter to Senator [REDACTED] BUMED:331-[REDACTED]:1m, 20 December 1968
- (22) Standard Form 600, Health Record – Chronological Record of Medical Care, 16 August 1968
- (23) [REDACTED]:14-[REDACTED] 1910, subj: Summary of matters concerning your recommendation for administrative discharge, and your response thereto, 26 September 1968
- (24) Petitioner's Statement, 26 September 1968
- (25) [REDACTED]:14-[REDACTED] 5800 Ser 1935, subj: [Petitioner]; Recommendation for discharge by reason of unsuitability, 30 September 1968
- (26) BUPERS Memo Pers-F321-(D)-[REDACTED], subj: [Petitioner] 15 October 1968
- (27) Standard Form 600, Health Record – Chronological Record of Medical Care, 28 October 1968
- (28) NPC Letter to Senator [REDACTED] Pers-F322-[REDACTED], 6 November 1968
- (29) Initial Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 11 June 2014
- (30) VA Form 21-526EZ, Application for Disability Compensation and Related Compensation Benefits
- (31) Review Post Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire, 17 October 2015
- (32) Department of Veterans Affairs Rating Decision, September 16, 2014
- (33) Department of Veterans Affairs Rating Decision, November 18, 2015
- (34) BCNR Letter RJO Docket No. 7841-17, 20 November 2018
- (35) Memorandum Opinion and Order, in the case of *[Petitioner] v. The United States*, in the United States Court of Federal Claims, [REDACTED], filed 13 January 2021
- (36) *[Petitioner] v. United States*, in the United States Court of Appeals for the Federal Circuit, [REDACTED], decided 25 January 2023

1. By Order dated 9 May 2023, the U.S. Court of Federal Claims (COFC) remanded the case filed by the Subject, hereinafter referred to as Petitioner, to the Board for Correction of Naval Records, hereinafter referred to as the Board, for reconsideration of its previous denial of Petitioner's request for relief in Docket No. 7841-17. Specifically, the COFC directed the Board

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to fully consider and address the issues raised in Petitioner's original application, the administrative record, any supplemental information, and additional matters to the extent of the Board's jurisdiction, including "whether the record evidence indicates, under the 'liberal consideration' standard, that [post-traumatic stress disorder (PTSD)]-related psychoses or psychoneuroses contributed to the circumstances resulting in [Petitioner's] discharge, and warrant[s] a change in [the] narrative reason for [Petitioner's] discharge from the Navy."<sup>1</sup> See enclosure (1).

2. A three-member panel of the Board, meeting in executive session, reconsidered Petitioner's allegations of error and/or injustice in accordance with its governing regulations and the Order of the COFC on 5 October 2023, and reached the conclusions discussed in paragraph 6 below. This was a *de novo* review, with no deference assigned to the Board's previous decision in Docket No. 7841-17. None of the panel members who considered Petitioner's application on 5 October 2023 participated in the previous review of Petitioner's case in Docket No. 7841-17. The names of those panel members will be provided on request. Documentary materials considered by the Board included the enclosures, to include specifically the Order of the COFC and the Joint Motion for Remand, dated 28 April 2023 (enclosure (3)), the entire administrative record for Petitioner's case and Petitioner's supplemental remand brief dated 8 June 2023 (see enclosure (4)),<sup>2</sup> and the case file for Docket No. 7841-17;<sup>3</sup> relevant portions of Petitioner's naval record; and relevant statutes, regulations, and policies, to include references (b) and (d).

3. The Board determined that Petitioner's personal appearance, with or without counsel, would not materially add to their understanding of the issues involved in Petitioner's case. Accordingly, the Board determined that Petitioner's personal appearance was not necessary and considered his petition based upon the evidence of record.

4. Factual Background. The relevant factual background of Petitioner's case, based upon his naval and medical records and other matters provided, is as follows:

a. Petitioner enlisted in the Navy and began a period of active duty service on 17 March 1966. See enclosure (9).

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<sup>1</sup> The quoted language in this order came from the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in the case of [REDACTED] v. *United States*, [REDACTED]. The CAFC found that the COFC had "erred in holding that the liberal consideration standard [of references (a) and (b)] does not apply to [Petitioner's] petition." Accordingly, the CAFC remanded Petitioner's case to the COFC to instruct the Board to reconsider its previous decision pursuant to the quoted language. See enclosure (36).

<sup>2</sup> In accordance with the COFC Order, Petitioner submitted additional matters for consideration by the Board on remand by e-mail dated 12 June 2023. These matters included the entire administrative record for Petitioner's case, consisting of 1006 pages and 82 exhibits, and his 28-page supplemental remand brief (enclosure (4)). The index for the administrative record provided is at enclosure (5).

<sup>3</sup> The case file for Docket No. 7841-17 was incorporated in the administrative record provided by Petitioner. It included Petitioner's original DD Form 149 and brief in support of his original application (enclosure (2)); the psychiatric evaluation report provided by Petitioner's expert witness (enclosure (6)); an advisory opinion (AO) provided by the Senior Medical Advisor (SMA) for the Secretary of the Navy Council of Review Boards (CORB), dated 20 September 2018 (enclosure (7)); and Petitioner's response to the CORB SMA's AO dated 2 November 2018 (enclosure (8)). The latter of these items was supplemented by a memorandum from the same expert witness who provided the psychiatric evaluation report at enclosure (6).

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b. After completing his initial recruit training at the U.S. Naval Training Center, [REDACTED], [REDACTED], Petitioner reported for duty onboard the [REDACTED] on or about 22 June 1966. See enclosure (10).

c. Petitioner performed messman duties from the time of his arrival onboard the [REDACTED] until on or about 13 September 1966. See enclosure (11).

d. On 16 September 1966, Petitioner received marks of 3.2 for every applicable performance trait in his first semiannual performance evaluation report.<sup>4</sup> See enclosure (11).

e. On 14 March 1967, Petitioner received his next semiannual performance evaluation for the period 17 September 1966 through 16 March 1967. His performance for this period was evaluated as follows: “[Petitioner] is an adequate worker. He seldom displays any initiative or interest in his work. [Petitioner] has found it difficult to adjust to Navy life.” See enclosure (12). His marks for the performance traits of professional performance and adaptability for this evaluated period dropped from 3.2 to 3.0.<sup>5</sup> See enclosure (11).

f. By letter dated 19 April 1967, the commanding officer of the [REDACTED] wrote to the Chief of Naval Personnel (CNP) about Petitioner in response to a Congressional Inquiry received from Senator [REDACTED].<sup>6</sup> This letter stated that Petitioner has performed his assigned duties in an adequate manner since reporting to the [REDACTED] in June 1967, referencing the evaluation report discussed in paragraph 4e above. However, in explaining why Petitioner was not competitive for the advanced schooling he apparently desired, it stated as follows:

“[Petitioner] seldom displays any initiative or interest in his work. Upon reporting to [REDACTED], [Petitioner] had explained to him by the Division Training Petty Officer what is necessary for advancement. He has not made a genuine effort to advance on his own, in that he has not completed his Practical Factors for Advancement or completed any of the required courses for advancement to [Airman (AN)]. This itself is disqualifying if one is to be considered for advanced schooling.”

This letter further revealed that Petitioner had submitted a request for schooling, but it was disapproved based upon his below average performance and his failure to attempt to prepare himself for the test for promotion to AN. Finally, it stated that Petitioner had again been counseled by his Division Officer on this matter, and indicated that Petitioner realizes what is expected of him. See enclosure (13).

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<sup>4</sup> The ratable performance traits consist of professional performance, military behavior, leadership and supervisory ability, military appearance, and adaptability. As Petitioner was a junior Sailor with no leadership or supervisory responsibilities, Petitioner’s “leadership and supervisory ability” was not rated. A 3.0 rating is considered to meet the minimum Navy standard.

<sup>5</sup> Petitioner’s marks for the performance traits of “military behavior” and “military appearance” remained unchanged at 3.2.

<sup>6</sup> This Congressional Inquiry was initiated based upon a letter written by Petitioner’s father to the Senator, complaining that Petitioner was being denied the technical training allegedly promised by his recruiter. See enclosure (14). No such promise was reflected in Petitioner’s enlistment contract. To the contrary, Petitioner endorsed the following statement in his enlistment contract: “I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, or promotion during my enlistment.”



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g. On 16 June 1967, Petitioner was advanced in rate to AN. See enclosure (15).

h. On 29 July 1967, a fire erupted on the deck of the ██████████ when a rocket was accidentally launched from an aircraft due to a malfunction and hit the fuel tank of another aircraft, starting a chain reaction which resulted in the explosion of numerous other bombs which ripped a hole in the flight deck and sprayed the deck and crew with burning fuel and other bombs. One-hundred thirty-four Sailors were killed and 161 were injured during this fire, and 21 aircraft were destroyed. According to his application, the ██████████ responded to render aid to the ██████████ during this incident, and Petitioner witnessed both the raging fire and the bodies of the killed and injured Sailors as they were transferred to the ██████████. See enclosures (2) and (16).

i. On 16 September 1967, Petitioner received his next semiannual performance evaluation for the period 17 March 1967 to 16 September 1967. His performance for this period was evaluated as follows: “[Petitioner] seldom displays any initiative or interest in his work. If something does interest him, he turns in a better than adequate performance, but these occasions are very rare. He shows no interest in obtaining advancement to the next higher pay grade. [Petitioner’s] uniforms are below Navy standards and usually are in need of mending.” His marks for the performance traits of professional performance and military appearance during this period dropped below the Navy standard to 2.8 (from 3.0 and 3.2 respectively).<sup>7</sup> See enclosures (11) and (15).

j. On 23 October 1967, four of Petitioner’s shipmates deserted while the ██████████ was docked in ██████████.<sup>8</sup> They were smuggled out of ██████████ by the ██████████, and were eventually granted asylum in ██████████. Three weeks later, the anti-war group which coordinated their desertion and transportation out of ██████████ released filmed statements from these individuals, which attracted international media attention. Two of the four individuals were reportedly close friends of the Petitioner, and Petitioner on been on liberty with them on the day prior to their desertion in ██████████. See enclosure (2).

k. Petitioner asserts that he was interrogated in the Captain’s cabin by “Men in Black” after the statements of the ██████████ were released to the press. He claims that these individuals pressed him for evidence that the statements were not the deserters’ own words, but that he refused to provide such evidence because he recognized the words as coming from those individuals. He further claims that these interrogators threatened to charge him with involvement in their desertion and treason, and eventually swore him to an oath of silence about the press statements. He also asserts that he was subsequently hidden from the press when they were brought onboard the ██████████ so that he would not be able to embarrass the Navy by departing from the standard message. Thereafter, Petitioner claims that he was shunned, threatened, and harassed due to his affiliation and empathy for the deserting Sailors. Included among this harassment reported by Petitioner were insulting comments regarding his racial tolerance from other reportedly racist shipmates. See enclosure (2).

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<sup>7</sup> Petitioner’s marks for the performance traits of military behavior and adaptability also dropped during this period from 3.2 to 3.0.

<sup>8</sup> These individuals are hereinafter referred to collectively as the ██████████



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l. On or about 16 March 1968, Petitioner received his next semiannual performance evaluation for the period 17 September 1967 to 16 March 1968. His marks for each of the evaluated performance traits notably improved during this period relative to those referenced in paragraph 4i above. Specifically, his rating for the professional performance trait rose from 2.8 to 3.4; for the military behavior trait from 3.0 to 3.6; for the military appearance trait from 2.8 to 3.2; and for the adaptability trait from 3.0 to 3.6. See enclosure (11).

m. Petitioner was absent without leave from the [REDACTED] from 18 May 1968 to 20 May 1968.<sup>9</sup> See enclosure (17).

n. On 17 June 1968, Petitioner received nonjudicial punishment for the unauthorized absence (UA) referenced in paragraph 4m above. He received seven days of correctional custody and was required to forfeit \$75 pay per month for two months. See enclosure (19).

o. On 15 August 1968, Petitioner was referred by his command to the [REDACTED] Medical Officer for a medical evaluation due to "his inability to get along with his peers, his recent mental agitation and deteriorating work habits, and his expression of admiration for [REDACTED]."<sup>10</sup> The medical officer who conducted this evaluation commented that Petitioner's opposition to the Vietnam War "lies at the core of his current agitation and failure to carry out his work as expected of him." He was found to be fully oriented to person, place and time, and reportedly carried the entire conversation, "hardly allowing any interruption for questions or statements and on several instances flew into a rage on the verge of both crying and striking the bulkhead with his fist." He also stated that he had "an intense feeling that he was about to do something violent either to himself or to someone else unless he received help." Petitioner was referred to a psychiatric evaluation and admitted to the [REDACTED] psychiatric ward following this encounter.<sup>11</sup> See enclosure (20).

p. The following day, on 16 August 1968 Petitioner was admitted to the [REDACTED] psychiatric ward for the psychiatric evaluation requested by the [REDACTED] Medical Officer referenced in paragraph 4o above. He remained hospitalized at [REDACTED] for observation and evaluation until 30 August 1968.<sup>12</sup> The narrative summary (NARSUM) recorded upon his

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<sup>9</sup> According to a letter dated 31 August 1968 from his father to Senator [REDACTED], Petitioner had returned to his family's home in [REDACTED] intending not to return to the ship and entertaining thoughts of defecting to [REDACTED] to join the [REDACTED]. He was convinced to return to the ship in part due to the counsel of clergy. See enclosure (18).

<sup>10</sup> Petitioner repeatedly asserts that this referral was made because he suffered a "nervous collapse," most likely due to the fact that this is how his father described the circumstances of this referral in enclosure (18), but that is not supported by the medical documentation recording the circumstances of the referral.

<sup>11</sup> The [REDACTED] Medical Officer who referred Petitioner for a psychiatric evaluation commented that "[n]either the command nor any individual crew member aboard a ship such as this should be saddled with the psychological problems and their consequences which are developing in this individual [sic], *whether this be a psychosis or not (emphasis added)*." He requested that the psychiatric evaluation "render an opinion as to [Petitioner]'s suitability for work in this responsible and dangerous environment and take any necessary steps."

<sup>12</sup> In a letter to Senator [REDACTED] dated 20 December 1968, presumably in response to a Congressional Inquiry prompted by enclosure (18), it was reported that Petitioner "exhibited a personality best described as a passive-aggressive type" during the course of his two-week hospitalization at [REDACTED]. Since Petitioner's father had suggested that Petitioner required immediate psychiatric therapy, it was explained in this letter that a passive-aggressive personality is not a mental illness, but rather a personality defect acquired during the formative years. See enclosure (21).

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discharge from [REDACTED] reported that he described himself as “a person who has always turned the other cheek and has always backed away from any fights or even talking back to people,” and that he reported feeling “isolated and different from his shipmates.” It also noted that Petitioner had completed one year of college prior to his enlistment, but quit because he was on academic probation, and that he joined the Navy to avoid being drafted and to receive some training. Petitioner’s affect was described as normal and appropriate to his thought content, and there was no evidence of any significant elation or depression, hallucinations, delusions, or ideas of reference, nor of any primary thought disorder. His physical examination was within normal limits, as was his neurological examination. After two weeks of direct observation and interaction with Petitioner, the [REDACTED] Chief of Neuropsychiatric Services, a U.S. Navy Reserve (USNR) Medical Corps officer, diagnosed Petitioner with a passive-aggressive personality, but stated that Petitioner appeared to gain some insight while hospitalized and opined that with some support onboard the ship Petitioner would be able to adjust to military life. Accordingly, Petitioner was not recommended for administrative discharge at that point, and was returned to full duty. See enclosure (22).

q. On 23 September 1968, Petitioner reportedly witnessed two Sailors, including one of his friends, suffer a traumatic and gruesome death when a plane crashed onto the deck of the [REDACTED], severing his friend’s body and dragging his torso out to sea.<sup>13</sup> He reported having to replay footage of the incident for hours afterwards in support of the investigative efforts. As a result, he reported suffering “constant and increasingly violent nightmares” leading to sleep deprivation. See enclosure (2).

r. On 26 September 1968, Petitioner was formally notified that he was being considered for administrative discharge from the Navy by reason of unsuitability based upon his diagnosed passive aggressive personality. See enclosure (23).

s. On 26 September 1968, Petitioner acknowledged receipt of the notice referenced in paragraph 4r above, and provided the following statement in response: “I ... believe that because of my mental state I am unfit for Naval Service. I believe my continuing service will be of no benefit to the Navy and harmful to myself. I therefore respectfully request that I be granted a discharge.” See enclosure (24).

t. By memorandum dated 30 September 1968, the [REDACTED] commanding officer strongly recommended to the CNP that Petitioner be separated from the Navy by reason of unsuitability due to his diagnosed passive-aggressive personality. See enclosure (25).

u. Petitioner was subsequently transferred to [REDACTED] to await action by the CNP on the recommendation for his administrative separation made by the [REDACTED] commanding officer. See enclosure (25).

v. By memorandum dated 15 October 1968, the CNP requested that Petitioner receive a psychiatric evaluation in accordance with BUPERS Manual Article C-10310. See enclosure (26).

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<sup>13</sup> Petitioner estimated that this incident occurred during the first week in August 1968, but in fact the crash occurred on 23 September 1968. Petitioner’s counsel acknowledged this discrepancy on page 10 of enclosure (4).

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w. On 28 October 1968, Petitioner was evaluated by a clinical psychologist and a psychiatrist at the ████████ Neuropsychiatric Clinic pursuant to the CNP's request referenced in paragraph 4v above. The mental status evaluation conducted during this session revealed no apparent organic or thought process disorder. Petitioner was described as "quite agitated and hostile in general, as he explained his conflicts with the military." It was noted that "[f]urther background history reveals that he has had similar conflicts with other organizations."<sup>14</sup> His judgment was described as "undependable under stress and in his relationship to other people," and he was further described as "continuously beset with fluctuating emotional attitudes, mainly because of his strong and poorly controlled hostility." The two evaluating mental health providers diagnosed Petitioner with an "Emotionally Unstable Personality," with noted paranoid traits in his personality. Specifically, they found that Petitioner "evidences a long standing characterological, attitudinal and behavioral pattern which existed prior to enlistment and will continue to manifest itself in the service." They further found that he was not amenable to psychiatric treatment within the service, does not warrant hospitalization, and does not appear likely to respond to rehabilitation within the service. Accordingly, they found that he was an appropriate individual for an administrative separation for unsuitability pursuant to BUPERS Manual Article 010310.<sup>15</sup> See enclosure (27).

x. By letter dated 6 November 1968, presumably in response to the inquiry initiated by enclosure (18), Senator ██████████ was informed that the CNP had directed that Petitioner be separated from the Navy by reason of unsuitability. See enclosure (28).

y. On 21 November 1968, Petitioner was honorably discharged from the Navy under the authority of BUPERS Manual Article C-010310. See enclosure (9).

z. After his discharge from the Navy, Petitioner enrolled at the University of ██████████ ██████████ to pursue a Bachelor of Fine Arts degree. He claims that he dropped out after his receipt of news that his best friend from the Navy committed suicide triggered residual PTSD symptoms.<sup>16</sup> After dropping out of college, he started working full time at a picture framing shop, and claims to have held many jobs over the years. See enclosures (8) and (29).

aa. On 20 July 2013, Petitioner was evaluated by a VA psychiatrist and given a provisional diagnosis of Anxiety (Not Otherwise Specified) and Depressive Disorder (Not Otherwise Specified). He was reportedly very concerned about his treatment in the Navy, and felt that it had adversely affected his entire life. When seen on 23 September 2013, Petitioner was reportedly much calmer than he was previously after obtaining his military medical records. See enclosure (29).

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<sup>14</sup> Petitioner's pending academic probation prior to his enlistment was cited as an example.

<sup>15</sup> This was the paragraph corresponding to discharge of enlisted personnel by reason of unsuitability. Character and behavior disorders were among the reasons listed for discharge for unsuitability.

<sup>16</sup> Although Petitioner now claims that it was the triggering of his PTSD symptoms upon learning of his friend's suicide which caused him to drop out of school after leaving the Navy, in June 2014 he reported to the Department of Veterans Affairs (VA) mental health provider who was evaluating his claim for benefits based upon service-connected PTSD that he left school because "he did not want to do what the teachers wanted as he disagreed with his teachers." See enclosure (29).



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bb. In late 2013, Petitioner filed an application for disability compensation with the VA, claiming both PTSD and his passive-aggressive personality diagnosis among the disabilities for which he sought compensation. See enclosure (30).

cc. On 11 June 2014, Petitioner was administered a compensation and pension (C&P) examination by the VA after filing the claim for disability compensation referenced in paragraph 4bb above. In support of his claim of PTSD, he cited to the loneliness and harassment he suffered after the [REDACTED] defected, and his experience during the [REDACTED] fire, as the traumatic events triggering his claimed PTSD condition. The examining provider opined that Petitioner met the Diagnostic and Statistical Manual (DSM) V criteria for PTSD, and that he developed PTSD symptoms “soon after the plane crash, starting with nightmares per his history.”<sup>17</sup> See enclosure (29).

dd. On 21 October 2015, Petitioner received another VA C&P examination. He was again found to meet the diagnostic criteria for PTSD.<sup>18</sup> See enclosure (31).

ee. On 16 September 2014, the VA granted Petitioner service-connection for PTSD (with alcohol use disorder) with a 50 percent disability rating, effective 9 December 2013. See enclosure (32).

ff. On 18 November 2015, the VA increased Petitioner’s service-connected disability rating for PTSD with alcohol use disorder to 70 percent, effective 27 August 2015. See enclosure (33).

## 5. Procedural Background.

a. Petitioner applied to the Board for relief on 14 September 2017, specifically requesting that his naval record be corrected to: (1) show that he was medically retired pursuant to BUPERSMAN C-10305 and reference (c);<sup>19</sup> (2) show that he was found unfit and medically retired for psychoses or psychoneuroses; and (3) remove the reference to “BUPERSMAN C-10310, SPN” from his DD Form 214.<sup>20</sup> In this application, he asserted that he was

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<sup>17</sup> The examining psychiatrist noted that Petitioner was very focused during the evaluation upon his perceived mistreatment in the Navy, particularly after the desertion of the [REDACTED]. Specifically, he noted that Petitioner believed that there was a conspiracy against him that got him discharged from the Navy in such a manner that he could not find gainful employment. The evaluating psychiatrist explicitly excluded these beliefs from his PTSD diagnosis, basing his PTSD symptoms solely on trauma associated with the plane crash and [REDACTED] fire.

<sup>18</sup> The evaluating psychologist also diagnosed Petitioner with Alcohol Use Disorder and Cannabis Use Disorder, both moderate in sustained remission.

<sup>19</sup> BUPERSMAN C-10305 was the authority for separation of enlisted personnel by reason of physical disability (i.e., for medical retirement/separation).

<sup>20</sup> Block 11c of Petitioner’s DD Form 214 states “BUPERS MANUAL ART. C-10310 265” as the “Reason and Authority” for Petitioner’s discharge. It is a reference to the fact that he was discharged for unsuitability due to a personality/character disorder.

<sup>21</sup> Petitioner also requested back pay for the military retirement benefits that he has been deprived since his discharge; compensation for lost income due to stigma; reimbursement for tuition and educational expenses; that he be declared immediately eligible for TRICARE benefits; and that he be compensated for his out-of-pocket medical costs incurred since TRICARE was not available to him. These specific requests were beyond the Board’s authority to grant. The Board is statutorily empowered to correct errors and/or remove injustices from naval records, but it is

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misdiagnosed with a personality disorder; that he actually had PTSD caused by the traumatic experiences he endured onboard the ██████████; that his PTSD condition qualified him for a medical retirement in November 1968; and that he has been stigmatized by the inclusion of reference to a personality disorder on his DD Form 214. Included among the 58 exhibits enclosed with this legal brief was a psychiatric evaluation conducted in 2017 by a psychiatrist hired by Petitioner's counsel. See enclosures (2) and (6).

b. By memorandum dated 20 September 2018, the CORB's SMA provided an AO in response to a request from the Board.<sup>22</sup> After reviewing Petitioner's application and service and medical records, the CORB's SMA recommended that Petitioner's request for relief be denied. He opined that the evidence shows that Petitioner became dissatisfied with his enlistment in the Navy rather early on to the point of considering desertion, and noted that he had been diagnosed at different times with Passive Aggressive Personality and Emotionally Unstable Personality. He also noted that there was no indication in that record that Petitioner ever complained of symptoms directly related to the ██████████ fire or the plane crash onboard the ██████████ in October 1968. He did, however, observe that the Petitioner demonstrated problems adjusting to the Navy prior to either of these traumatic events. He also noted that Petitioner's acknowledged the notice of his administrative separation on 26 September 1968, just three days after the ██████████ plane crash, so that experience did not appear to play any part in Petitioner's symptoms or discharge. Finally, the CORB's SMA opined that neither psychoses nor psychoneuroses (i.e., the diagnoses compensable for medical retirement purposes at the time) appears to have applied to Petitioner's clinical presentation at the time. He ultimately opined that the preponderance of the evidence supports the existence of significant adjustment difficulties beginning prior to Petitioner's enlistment and evolving into attitudinal and behavioral issues in conflict with the requirements of military service prior to his exposure to the traumatic incidents reported. He did not dispute Petitioner's later diagnosis with PTSD, but noted that there "is little objective evidence in [Petitioner's] Service Treatment Record ... suggesting [that] a significant ... PTSD-related stress reaction made a significant contribution to the circumstances resulting in the contested administrative separation." Finally, he suggested that "Adjustment Reaction of Adult Life" or "Occupational Maladjustment" might have been alternative diagnostic choices, but neither would have qualified for medical retirement benefits and both would have resulted in the same type of administrative separation. See enclosure (7).

c. On 2 November 2018, Petitioner, through counsel, provided a rebuttal to the AO referenced in paragraph 5b above. This rebuttal described the AO as arbitrary and capricious because it misread the evidence in Petitioner's case. Specifically, it disputed the AO's reliance upon the fact that Petitioner was placed on academic probation prior to his enlistment, noting that individuals may be placed on academic probation for any number of reasons; disputed the characterization of Petitioner's service in the Navy prior to his exposure to traumatic event; and

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not empowered to direct the payment of any money or benefits to an applicant. While the Board may correct an applicant's record in such a manner as to make the applicant retroactively eligible for military retirement benefits or military health care, it is not empowered to direct payments for damages such as loss of income, tuition and educational expenses incurred, or medical expenses. In this regard, the Board notes that Petitioner was honorably discharged, so his discharge did not disqualify him for VA medical treatment.

<sup>22</sup> The CORB's SMA also carries the title of Senior Psychiatric Advisor. He is a Medical Doctor and Distinguished Life Fellow of the American Psychiatric Association.

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accused the CORB's SMA of misreading the psychiatric evaluation conducted at [REDACTED] in October 1968.<sup>23</sup> The rebuttal further asserted that the AO was arbitrary and capricious because it failed to consider evidence presented in Petitioner's case. Specifically, Petitioner's counsel accused the CORB's SMA of arbitrarily selecting facts from the letter written by Petitioner's parents to Senator [REDACTED] in August 1968, while ignoring others favorable to Petitioner's argument. His counsel further accused the CORB's SMA of ignoring the evidence of Petitioner's treatment and its resulting traumatizing environment onboard the [REDACTED] following the desertion of the [REDACTED], and the true nature of Petitioner's traumatic experiences during the [REDACTED] fire. Petitioner's counsel also disputed the assertion made by the CORB's SMA that Petitioner has been "able to sustain a social and occupational adjustment, supporting himself and pursuing education goals without coming to significant mental health attention until over four decades post separation." Finally, Petitioner's counsel alleged that the AO was contrary to law because it failed to apply the liberal consideration guidance of reference (b),<sup>24</sup> and because it was contrary to precedent established in other Board decisions.<sup>25</sup> Petitioner's counsel also argued that the AO would not be admissible in Federal Court under the *Daubert* standard.<sup>26</sup> This response included 18 exhibits, among which was a memorandum from the psychiatrist who provided the psychiatric evaluation at enclosure (6). See enclosure (8).

d. On 8 November 2018, the Board considered and denied Petitioner's request for relief in Docket No. 7841-17. In making its findings, the Board substantially concurred with the AO referenced in paragraph 5b above. It found insufficient evidence of unfitness for continued naval service due to psychosis or psychoneurosis in Petitioner's naval records. The Board was also not persuaded by the VA's subsequent disability ratings for PTSD in 2017, finding them to be too distant in time from 1968 to be probative of Petitioner's fitness for continued naval service in 1968, and the 1968 diagnosis to be more credible than the psychiatric evaluation conducted by Petitioner's expert witness in 2017 since the former was based upon personal observations made by mental health professionals during the time period in question rather than the review of medical records and Petitioner's personal assertions made more than 40 years after the fact. In reaching its decision, the Board did not apply liberal consideration to Petitioner's complaint pursuant to references (a) or (b), based upon assumption that such guidance applied only to requests for discharge upgrades and not to requests for military retirement benefits.<sup>27</sup> See enclosure (34).

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<sup>23</sup> Petitioner's counsel argues that the documented symptoms from the psychiatric evaluation were better understood as what are now recognized as PTSD symptoms.

<sup>24</sup> The Board notes that reference (b) does not apply to Navy officials who provide expert AOs to the Board. Rather, the guidance is directed to the actual Board members.

<sup>25</sup> Specifically, Petitioner's counsel referenced the Board's decisions in Docket Nos. 13255-14, 1100-14, 5850-14, and 3349-14. The Board notes, however, that the provider of a medical AO would not be expected to consider prior Board precedents. That is the responsibility of the actual Board members when such precedents are raised.

<sup>26</sup> The Board notes that the AO was not prepared for presentation in Federal Court, but rather was presented for consideration by the Board.

<sup>27</sup> This was the interpretation of the guidance applied by all three Military Departments, and endorsed by the proponent of reference (b), prior to the decision of the CAFC in Petitioner's case.



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e. On 27 December 2019, Petitioner's filed a complaint with the COFC, alleging that the Board's refusal to apply the liberal consideration guidance of reference (b) was arbitrary, capricious, an abuse of discretion, and contrary to law; that the Board's decision itself was arbitrary, capricious, unsupported by substantial evidence, and contrary to law; and that the Board failed to afford Petitioner procedural due process in violation of the Fifth Amendment to the U.S. Constitution. On 13 January 2021, the COFC found that it did not possess subject-matter jurisdiction to consider Petitioner's due process claim.<sup>28</sup> It also found that the Board's decision in Docket No. 7841-17 was in accordance with law and supported by substantial evidence. In making this finding, the COFC found that the Board did not err in declining to apply the liberal consideration guidance of reference (b) to Petitioner's application. See enclosure (35).

f. Petitioner subsequently appealed the COFC decision to the CAFC. On 25 January 2023, the CAFC ruled that the COFC erred in holding that the liberal consideration standard of reference (b) does not apply to Petitioner's application.<sup>29</sup> Accordingly, the CAFC vacated the COFC decision referenced in paragraph 5e above, and remanded the case to the COFC with instructions to direct the Board to consider whether the record evidence indicates, under the "liberal consideration" standard, that PTSD-related psychoses or psychoneuroses "contributed to the circumstances resulting in [Petitioner]'s discharge"<sup>30</sup> ... and "warrant[s] a change in [the] narrative reason" for Petitioner's discharge from the Navy. See enclosure (36).

g. By Order dated 9 May 2023, the COFC remanded Petitioner's case to the Board pursuant to the instructions of the CAFC. See enclosure (1).

6. CONCLUSIONS. Upon careful review and consideration of all of the evidence of record, the Board found no error or injustice in Petitioner's discharge for unsuitability due to his diagnosed personality disorder(s) at the time that it was administered. However, the Board did find an injustice in that Petitioner's DD Form 214 continues to make reference to a reason and authority for separation which can be traced back to his diagnosed personality disorder, as this reference unnecessarily requires Petitioner to disclose private and potentially embarrassing personal medical information whenever he has reason to prove his otherwise honorable service. Accordingly, the Board recommends that the reason and authority for Petitioner's separation reflected on his DD Form 214 be changed in the interests of justice.

a. There was no error or injustice in Petitioner's discharge for unsuitability due to a personality disorder. Specifically, the preponderance of the evidence established that Petitioner was properly diagnosed with a personality disorder. As such a diagnosis provided a proper basis for separation for unsuitability at the time, there was nothing improper about Petitioner's discharge for this reason.

(1) The most compelling evidence that Petitioner had a personality disorder was the diagnosis of passive aggressive personality which rendered by the Chief of Neuropsychiatry

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<sup>28</sup> The COFC found that it did not possess subject-matter jurisdiction to consider claims based upon the due process clauses of the Fifth or Fourteenth Amendments, because they were not money-mandating provisions.

<sup>29</sup> The CAFC also extended its analysis to the liberal consideration guidance contained within reference (a).

<sup>30</sup> The CAFC cited to reference (a) for this part of its instruction.

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upon his discharge from the [REDACTED] psychiatric ward on 30 August 1968. The Board presumes that the [REDACTED] Chief of Neuropsychiatric Services, a Lieutenant Commander in the USNR Medical Corps, was qualified to render such a diagnosis. It also finds no reason to believe that this provider was predisposed to reach the conclusion that he did. To the contrary, this provider had a professional responsibility to both Petitioner and to the Navy to accurately assess and diagnose Petitioner, both for the well-being of his patient and for the safety of other naval personnel. Petitioner spent two weeks at the [REDACTED] psychiatric ward, during which time he was subject to constant observation by, and numerous direct interactions with, mental health professionals. The diagnosis was presumably based upon these observations and interactions over the course of this two-week hospitalization, which provided by far the most reliable basis of any of the various competing diagnoses of Petitioner. That diagnosis also appears to be supported by the objective evidence. For example, enclosure (21) revealed that Petitioner exhibited a passive-aggressive type personality over the course of his hospitalization. The Board presumes that such presentation contributed to the diagnosis. Additionally, contrary to Petitioner's contentions, the behaviors which informed this diagnosis were evident prior to his reported trauma exposure events. Petitioner had demonstrated dissatisfaction with his enlistment and difficulty adjusting to the Navy almost from the start of his enlistment. In fact, in March 1967 his performance evaluation report specifically observed that he "found it difficult to adjust to Navy life." While his work performance was rated as "adequate," it met only the bare minimum standards and his difficulty adjusting to the Navy was so apparent that it was noted on multiple occasions. The evidence also reflects that Petitioner had similar conflicts with other organizations prior to his enlistment. Specifically, he joined the Navy only after he was about to be placed on academic probation. Petitioner's counsel is correct in stating that there are many possible explanations for poor academic performance besides a personality disorder. However, this fact was cited by both the [REDACTED] Chief of Neuropsychiatric Services and by the Clinical Psychologist and Psychiatrist who evaluated Petitioner at [REDACTED], as a basis for their respective personality disorder diagnoses. This was not random; each of these mental health professionals drew a parallel between Petitioner's pre-service academic difficulties and his difficulty adjusting to life in the Navy. The Board presumes that such parallels were drawn based upon their direct interactions with Petitioner at different times and places. The Board also notes that Petitioner reported in June 2014 that he dropped out of school after being discharged from the Navy because "he did not want to do what the teachers wanted as he disagreed with his teachers,"<sup>31</sup> providing further evidentiary support for the conclusion that Petitioner had long-standing difficulties adjusting to expectations imposed by institutions in an academic setting. The conclusion that this was a long-standing personality type was further supported by Petitioner's own words. He described himself as "a person who has always turned the other cheek and has always backed away from any fights or even talking back to people." This statement provided a specific example of direct interaction with Petitioner feeding the personality disorder diagnosis. Ultimately, the Board found a diagnosis rendered by a qualified mental health professional after two weeks of direct observation and interaction with Petitioner to be the most reliable evidence of Petitioner's mental health status in 1968.

(2) The personality disorder diagnosis rendered by the [REDACTED] Chief of Neuropsychology was corroborated by the diagnosis rendered by the clinical psychologist and psychiatrist at [REDACTED] who diagnosed him with an emotionally unstable personality two months later. As this diagnosis

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<sup>31</sup> See enclosure (29).

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was not informed by two weeks of direct observation and interaction with Petitioner, the Board did not find it to be as reliable as the diagnosis rendered at [REDACTED]. However, the Board found that this diagnosis tended to verify the previous diagnosis. It confirmed the long-standing nature of Petitioner's issues, and confirmed the existence of a personality disorder. While the [REDACTED] and [REDACTED] mental health professionals reached different conclusions regarding the type of personality disorder present, this difference is reasonably explained by the relatively limited direct observation and interaction time available to the latter and Petitioner's presentation during that limited period of exposure. The Board ultimately found the difference between these diagnoses to be irrelevant, as either would have provided a valid basis for Petitioner to be involuntarily separated for unsuitability due to a personality disorder.

(3) Petitioner was diagnosed with a personality disorder before any of his PTSD symptoms began to manifest. Both the VA mental health provider at enclosure (29) and Petitioner's expert witness at enclosures (6) and (8) suggested that Petitioner's PTSD symptoms began to manifest after he witnessed the plane crash on the deck of the [REDACTED]. This incident occurred on 23 September 1968, more than three weeks after he had already been diagnosed with the passive-aggressive personality disorder which resulted in the initiation of his administrative separation for unsuitability. As Petitioner's PTSD symptoms had not yet manifested as of 30 August 1968, they could not have been confused for a personality disorder.

(4) The only material evidence that Petitioner provided to counter Petitioner's personality disorder diagnoses was the opinion of his expert witness at enclosure (6), who opined that Petitioner's history was not consistent with a diagnosis of a personality disorder. The Board did not question or doubt this psychiatrist's credentials or qualifications to render this opinion. Rather, it simply found the diagnoses rendered by multiple qualified mental health professionals who observed and interacted with Petitioner during the time period in question, particularly that which was informed by two weeks of direct observation and interaction by a provider who had a professional obligation to accurately assess Petitioner's mental health at the moment of his diagnosis, to be more reliable than the evaluation provided by someone paid to provide an opinion with no professional obligation for Petitioner's care and based upon a single interview and review of records nearly 50 years after the fact. By his own admission, Petitioner was a poor historian for his own experience and condition.<sup>32</sup> As such, this evaluation was primarily informed by the history provided by an unreliable reporter nearly 50 years after the fact. He also relied upon the fact that none of the VA providers who evaluated Petitioner diagnosed him with a personality disorder, when in fact those providers were evaluating his claim for benefits based upon PTSD and were not providing a holistic mental health assessment.<sup>33</sup> The Board also found it ironic that this witness questioned the credibility of the CORB's SMA for rendering an opinion without considering the opinions of other doctors who evaluated Petitioner,<sup>34</sup> while ignoring the opinions of the three fully qualified mental health professionals who had direct interaction with Petitioner during the relevant time period in 1968.

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<sup>32</sup> In describing his reaction upon receiving his first set of service records in June 2012, Petitioner stated that he "could not recall major parts of that period in my life, in fact for many years after it is a blur."

<sup>33</sup> Enclosures (29) and (31) are questionnaires used exclusively to evaluate claims for PTSD.

<sup>34</sup> See enclosure (8).



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(5) The Board noted that Petitioner included his diagnosed passive-aggressive personality disorder on his claim for disability compensation in enclosure (30). While the Board did not find this to be conclusive evidence since Petitioner is not a trained mental health professional, it did consider this fact as evidence that Petitioner did not originally question the accuracy of the diagnosis.

(6) As noted in its discussion of the relative credibility of the assessment provided by Petitioner's expert witness in paragraph 6(a)(4) above, the Board found no relevance to Petitioner's contention that the VA mental health professionals did not diagnose Petitioner with a personality disorder. That was not their function. These evaluations were conducted in the context of a C&P examination intended only to confirm or refute the Petitioner's claimed PTSD condition. These were not holistic mental health assessments intended to provide treatment and/or to identify every potential condition. The fact that these providers did not diagnose any personality disorders in this context was completely irrelevant to the question of whether Petitioner in fact has a personality disorder.

(7) The Board also found no relevance to Petitioner's contention that he was medically cleared for enlistment. An enlistment physical could not possibly identify the existence of any personality disorders not reported by the enlistee. As such, the Board found the fact that Petitioner was medically cleared for enlistment and that his enlistment physical failed to identify any personality disorders to be irrelevant to the question of whether he in fact has a personality disorder.

(8) The Board found that Petitioner exaggerated the quality of his pre-trauma performance to bolster his argument that he did not previously display the behaviors supporting the personality disorder diagnoses. Specifically, he noted that he was "awarded for his service in Vietnam prior to witnessing the [REDACTED] fire and [REDACTED] deck crash" and "received the Vietnam Service Medal and a commendation for participating in combat operations on the [REDACTED]." The Vietnam Service Medal was awarded for service in the designated area of operations, and the commendation that he cited was a unit award granted to every member of the [REDACTED] crew. Neither of these awards was merit-based or provided evidence of the quality of Petitioner's performance to counter the diagnoses rendered in 1968. While Petitioner's performance of duty was generally considered to be adequate throughout his naval service, the evidence clearly reflects that Petitioner exhibited difficulties adjusting to and dissatisfaction with Navy life almost from the start of his enlistment.

(9) Petitioner made several assertions that certain facts did not provide evidence of a personality disorder. Specifically, he asserted that neither his misgivings about the Vietnam War nor his refusal to lie about and sympathy for the [REDACTED] provided evidence of a personality disorder. The Board found these arguments to be irrelevant, as there was no evidence that these factors contributed to his personality disorder diagnoses. While Petitioner's anti-war sentiments and sympathy for the [REDACTED] apparently contributed to his disillusionment with the Navy, there was no evidence that the providers who diagnosed him with personality disorders relied upon his political beliefs or sympathies to support those diagnoses.

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(10) Petitioner's contention that the diagnoses rendered in 1968 are untrustworthy due to the animus held against him by the [REDACTED] crew is without merit. The diagnosis of a passive-aggressive personality was rendered by the Chief of Neuropsychiatric Services at [REDACTED]. As such, it was rendered by someone with no affiliation to the [REDACTED]. Further, the clinical records documenting his hospitalization at [REDACTED] reflect no sign of the animus he describes, as it was apparent that Petitioner rapidly became comfortable away from the ship. Likewise, the emotionally unstable personality diagnosis was rendered by two mental health professionals at [REDACTED] with no affiliation to the [REDACTED], after Petitioner was removed from the ship's crew to await a formal decision regarding his separation from the Navy.

(11) The Board acknowledged Petitioner's contention that the Navy has misdiagnosed personality disorders in the past, but found no reason to believe that it had done so in this case.

b. Applying liberal consideration in accordance with references (a) and (b) and in accordance with the COFC Order, the Board found that Petitioner may have been suffering the symptoms of what is now known as PTSD at the time of his discharge, and that those symptoms may have indirectly contributed to the circumstances of his discharge.

(1) In accordance with reference (b), the Board applied liberal consideration to Petitioner's claim that he was suffering from the symptoms of what is now known as PTSD during his naval service. Based upon such consideration, the Board found sufficient evidence that Petitioner developed symptoms of what is now known as PTSD due to the traumatic experienced he endured onboard the [REDACTED]. In this regard, the Board applied special consideration to the VA's determination of the that Petitioner's current PTSD condition was service-connected, and liberal consideration to the diagnosis rendered by Petitioner's expert witness in enclosure (6). Specifically, the Board applied special and/or liberal consideration to the diagnoses and opinions rendered by the VA's mental health provider at enclosure (29) and the Petitioner's expert witness at enclosure (6) to conclude that Petitioner began to exhibit PTSD symptoms, such as nightmares, sleeping problems, etc., at some point after his exposure to the plane crash on 23 September 1968. This incident occurred almost two months before Petitioner's discharge, so it is reasonable to assume that the symptoms may have started to manifest before his discharge. Accordingly, despite the fact that Petitioner did not present the symptoms relied upon to sustain his current PTSD diagnosis during either of his psychiatric evaluations while in the Navy, to include during his two-week stay at the [REDACTED] psychiatric ward, the Board accepted as true that Petitioner had a latent PTSD condition at the time of his discharge.

(2) As reference (b) provides that requests for discharge relief typically involve four questions, each of those questions are addressed as follows:

(a) *Did the Veteran have a condition that may excuse or mitigate the discharge?* As discussed above, the Board found sufficient evidence that Petitioner has a PTSD condition.

(b) *Did that condition exist during military service?* Applying liberal consideration, the Board found sufficient evidence to conclude that Petitioner's PTSD condition originated

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from the traumatic experiences he endured while onboard the [REDACTED] and may have existed prior to his discharge.

(c) *Does that condition actually excuse or mitigate the discharge?* As Petitioner was honorably discharged for a reason other than misconduct, there is nothing for this condition to excuse or mitigate. The only misconduct in Petitioner's record was a two-day UA in April 1968, which was so minor as to be irrelevant to his case.

(d) *Does that condition outweigh the discharge?* As stated above, the only misconduct in Petitioner's record was his two-day UA, and that misconduct was so minor that it was irrelevant to Petitioner's case. Accordingly, there was nothing against which to weigh his PTSD condition.

(3) Even applying liberal consideration, however, the Board did not find evidence that Petitioner suffered from any psychoses during his naval service. Per reference (b), psychoses was defined as "[r]ecurrent psychotic episodes, or a single well-established psychotic episode with existing symptoms or residuals thereof sufficient to interfere with performance of duty or normal pursuits." There is no evidence in the record that Petitioner ever experienced a single psychotic episode while in the Navy, much less recurrent psychotic episodes. Petitioner's referral for a medical evaluation on 15 August 1968 did not reflect the occurrence of a psychotic episode. He was specifically described during that session as being "fully oriented to person, place, and time." Additionally, in referring Petitioner for a psychiatric evaluation, the [REDACTED] Medical Officer stated that "[n]either the command nor any individual [sic] crew member about a ship such as this should be saddled with the psychological problems and their consequences which are developing in this individual [sic], *whether this be a psychosis or not (emphasis added).*" The emphasized language of this statement suggests that the Medical Officer did not believe Petitioner's psychological problem to be a psychosis, but rather only that his problems were not compatible with a combat vessel at war. The Board was not persuaded in this regard by the fact that Petitioner was administered Thorazine during this session, which Petitioner identified as an anti-psychotic medication, as enclosure (20) reflects that this medication was administered in only small doses for the purpose of sedating Petitioner, rather than to treat him for any psychosis. The Board was also not persuaded by Petitioner's claim that he was referred for a psychiatric evaluation due to a "nervous collapse." This claim is not supported by the evidence. That was how Petitioner described the circumstances of his referral for a psychiatric evaluation to his parents at the time, and how his parents subsequently explained it to Senator [REDACTED] in enclosure (18), but it is not what is reflected by the medical records. Even if it was described as a "nervous collapse," however, that would not meet the definition of psychosis. The presentation of irrational anger and frustration does not imply the occurrence of a psychotic episode. The next day, Petitioner was transferred to the [REDACTED] psychiatric ward. After two weeks of direct observation and interaction with Petitioner, the [REDACTED] Chief of Neuropsychiatric Services described Petitioner's affect as "normal and appropriate to his thought process," noted "no evidence of any significant elation or depression," and stated that Petitioner experienced "no hallucinations, delusions, or ideas of reference, nor of any primary thought disorder." He further described Petitioner as "oriented in all spheres," with adequate memory and intellectual functioning. Even though PTSD was not identified as a diagnosable condition in 1968, psychosis was such a condition, so the fact that the [REDACTED] Chief



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of Neuropsychiatric Services did not diagnose Petitioner with psychosis after two weeks of direct observation and interaction is highly persuasive evidence that no such condition existed at the time. When Petitioner received a psychiatric evaluation at ████████ nearly two months after his discharge from the ████████ psychiatric ward, a mental status examination revealed “no apparent organic or thought process disorder.” In other words, he presented no evidence of psychosis. Finally, none of the PTSD symptoms described by Petitioner’s expert witness in either enclosure (6) or enclosure (8) would reasonably meet the definition of psychosis.<sup>35</sup>

(4) Likewise, the Board also found insufficient evidence, even upon liberal consideration of the evidence, to find that Petitioner should have been diagnosed with psychoneuroses during his naval service. Per reference (b), psychoneuroses was defined as “[s]evere symptoms, persistent or recurrent, requiring hospitalization or the need for continuing psychiatric support.” The definition also includes a caveat that “[i]ncapacity because of neurosis must be distinguished from weakness of motivation or underlying personality disorder,” and as noted above, Petitioner had been diagnosed with an underlying personality disorder which manifested itself in weakness of motivation before his manifestation of any PTSD symptoms. Even applying liberal consideration, the evidence does not support the conclusion that Petitioner experienced severe persistent or recurrent symptoms requiring hospitalization or the need for continuing psychiatric support *while he was in the Navy*. Petitioner’s referral to the ████████ psychiatric ward was for a psychiatric evaluation, not for treatment of severe persistent or recurrent symptoms, and ended with the conclusion that such hospitalization or continuing psychiatric support was not necessary. More significantly, following his discharge from ████████ on 30 August 1968 and went 45 years without hospitalization or psychiatric support for his PTSD symptoms, which tends to negate his claim that these symptoms were of such severity as to require such treatment or support. Finally, the Board noted that both the VA mental health provider who first diagnosed Petitioner with PTSD in enclosure (29), and Petitioner’s own expert witness in enclosures (6) and (8), found that Petitioner’s PTSD symptoms (i.e., nightmares, sleeping problems, etc.) began to manifest after witnessing the plane crash. This incident occurred on 23 September 1968, just three days before Petitioner’s administrative separation for unsuitability due to a personality disorder which had already been diagnosed and his transfer to ████████ to await action on that recommendation. While Petitioner’s expert witness may have identified the onset of PTSD symptoms during his naval service, he did not identify any severe symptoms requiring hospitalization during Petitioner’s naval service. The justification that he relies upon to support his opinion that Petitioner should have been diagnosed with psychoneurosis while in the Navy primarily focuses on how Petitioner’s PTSD condition manifested itself after his naval service. While such post-service manifestations may support his receipt of VA disability compensation for service-connected PTSD, they do not support the conclusion that Petitioner should have been diagnosed with psychoneuroses while in the Navy. As stated above, the Board accepted as true that Petitioner developed what we now know as PTSD as a result of his exposure to traumatic events onboard the ██████████, and that the symptoms of this condition may have begun to manifest prior to his discharge from the Navy, but simply did not find any evidence to support the conclusion that he should have been diagnosed with either psychosis or psychoneurosis while he was in the Navy. The fact that these conditions may have been the closest analogue

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<sup>35</sup> The Board acknowledges and notes that Petitioner’s expert witness did not suggest that Petitioner’s symptoms reflected psychosis. Rather, he expressed his opinion that they were consistent with a diagnosis for psychoneurosis at the time.

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conditions in reference (b) to what we now know as PTSD does not mean that a PTSD condition necessarily should have been diagnosed as either psychosis or psychoneurosis at the time.

(5) In accordance with reference (a), the Board reviewed Petitioner's claim with liberal consideration that his PTSD condition potentially contributed to the circumstances resulting in his discharge. Applying very liberal consideration in this regard, the Board found that Petitioner's PTSD condition did potentially contribute indirectly to the circumstances of his discharge. Specifically, the Board found it plausible, if not likely, that Petitioner's pre-existing personality disorder made him more susceptible to developing PTSD upon exposure to traumatic events, and that in turn his exposure to traumatic events amplified the presentment of his personality disorder. This conclusion is supported by the fact that Petitioner's attitudinal issues, and anger and disillusionment with the Navy seemed to increase after his exposure to the traumatic events he experienced onboard the [REDACTED]. Additionally, the anger and hostility manifested by Petitioner during his psychiatric evaluation on 28 October 1968 could have been influenced by his nascent PTSD condition. The Board believes it likely that such manifestations would have developed regardless of his exposure to traumatic events given his anti-war sentiments, but accepts that these traumatic events potentially contributed to their manifestation based upon the application of liberal consideration.

c. Although the Board accepted as true the premise that Petitioner's PTSD condition potentially contributed to the circumstances of Petitioner's discharge, as discussed above, it did not find that this conclusion warranted a change to Petitioner's narrative reason for separation to reflect his discharge for physical disability.<sup>36</sup> Petitioner's argument in this regard fails for several reasons:

(1) The first reason that Petitioner's argument fails in this regard is that he seems to present his proper diagnosis as an "either-or" scenario. Specifically, he seems to argue that since his proper diagnosis was PTSD that he could not have had a personality disorder.<sup>37</sup> This is not accurate. Both diagnoses may be accurate, and based upon liberal consideration the evidence suggests that they both were. Petitioner's in-service presentation clearly supported the in-service personality disorder diagnoses that he received from the multiple mental health professionals who had direct observation and interaction with him at the time, while the development and progression of his post-service mental health challenges support the conclusion that he had an underlying PTSD-related condition resulting from his exposure to traumatic experiences onboard the [REDACTED]. As discussed above, the Board found it likely that Petitioner's personality disorder made him more susceptible to develop PTSD as a result of his traumatic exposures, while his exposure to traumatic incidents likely amplified the presentation of his personality disorder. In any case, the Board rejected the notion that the existence of an underlying PTSD-related condition negated or undermined the accuracy of Petitioner's personality disorder diagnoses.

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<sup>36</sup> As discussed further below, the Board found that a change to Petitioner's narrative reason for separation was warranted on other grounds.

<sup>37</sup> The Board acknowledges that Petitioner did not explicitly make this argument. However, it is clearly implied throughout his application.

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(2) The second and more important reason that Petitioner's argument fails in this regard is that he seems to assume that the mere existence of a PTSD condition (or, in this case, a PTSD-related psychosis or psychoneurosis condition since PTSD itself was not recognized at the time) would render him unfit and therefore entitled to a medical separation or retirement. This belief is apparent from his application and argument. For example, in support of his opinion rendered in enclosure (6) that the proper disposition of Petitioner's case was for Petitioner to have been found "unfit" pursuant to BUPERSMAN C-10305, Petitioner's expert witness simply restated all of the evidence supporting his conclusion that Petitioner was exhibiting manifestations of what would currently be classified as PTSD. This included his exposure to traumatic events, and his manifestation of PTSD-related symptoms during his service and their persistence throughout the years following his service. Nothing in his opinion addressed how Petitioner's PTSD condition rendered him unfit,<sup>38</sup> rather, his conclusion regarding Petitioner's unfitness was based solely upon the existence of the PTSD condition. Petitioner's counsel essentially echoed this argument in enclosure (2) in the context of equating Petitioner's PTSD condition to psychosis and/or psychoneurosis, and erroneously stated in enclosure (4) that either psychosis or psychoneurosis "would have required disability retirement in 1968." The assumption that the mere existence of PTSD, or a PTSD-related psychosis or psychoneurosis condition, warranted a finding of unfitness for continued naval service is simply wrong.

(a) As noted above, the Board found insufficient evidence to conclude that Petitioner should have been diagnosed with either a psychosis or psychoneurosis condition. However, even if such conditions existed at the time, their mere existence would not automatically qualify Petitioner for separation by reason of physical disability pursuant to BUPERS Manual Article C-10305. While reference (c) listed these conditions among those which "normally" renders a Service member unfit for further service, it did not state that they necessarily did so in every case. To be unfitting, such conditions would have to have rendered Petitioner unable to perform the duties of his office, rank, grade, or rating in such a manner as to reasonably fulfill the purpose of his employment on active duty. Petitioner offered no evidence to establish that Petitioner's condition, be it PTSD, or a PTSD-related psychosis or psychoneurosis, rendered him unable to reasonably perform his duties. To the contrary, in attempting to refute the CORB SMA's AO in enclosure (8), Petitioner's counsel inadvertently demonstrated that Petitioner was at all times during his naval service fully capable of performing those duties to standard. Specifically, he observed that the "reports show that [Petitioner] *performed his duties satisfactorily*, even if he was not a stellar sailor (*emphasis added*)" and that the records "do not show misconduct."

(b) Petitioner's argument that the Navy determined Petitioner to be unfit to perform his duties when it separated him for unsuitability is without merit. There is a marked difference between being unsuited for military service and being unable to perform the duties of one's office, rank, grade, or rating. This is obvious from the fact that in 1968 one could be separated for unsuitability due to homosexuality among other reasons which have no impact upon one's ability to perform their duties. The Board found no merit or logic to Petitioner's argument that they are functionally identical. The Navy clearly did not, as Petitioner's counsel suggests,

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<sup>38</sup> Reference (c) provided that "[a] member is unfit because of physical disability when he is unable to perform the duties of his office, rank, grade, or rating in such a manner as to reasonably fulfil the purpose of his employment on active duty."

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determine that Petitioner was unfit to perform his duties when it separated him for unsuitability. Rather, it separated him for unsuitability because his demonstrated attitudinal and adaptability issues manifested by his pre-existing personality disorder, which predated his exposure to any of his traumatic experiences onboard the [REDACTED]. At no time was there ever any question regarding Petitioner's ability to perform his duties in such a manner as to reasonably fulfill the purpose of his employment.

(3) Both the VA mental health provider who diagnosed Petitioner with PTSD in 2014 and Petitioner's own expert witness who conducted a psychiatric evaluation upon him in 2017 concluded that Petitioner's PTSD symptoms manifested after his exposure to the plane crash on the deck of the [REDACTED]. This incident occurred on 23 September 1968, and three days later he was removed from the ship and transferred to [REDACTED] to await a final decision on his administrative separation initiated due to his personality disorder. As such, it is unfortunately impossible to prove that the onset of his PTSD condition rendered Petitioner unable to perform the duties of his office, rank, grade, or rating.

(4) Besides the fact that Petitioner offered no evidence that his PTSD-related condition rendered him unfit for continued service, the objective evidence in the record strongly suggests that he remained capable of performing his duties at all times throughout his naval service.

(a) The most convincing evidence that Petitioner remained capable of performing the duties of his office, rank, grade, or rating throughout this naval service is that he actually did so. As Petitioner's counsel noted, Petitioner's work performance was routinely assessed as adequate and within the Navy standards. His professional performance was rated at, or above, the Navy standard throughout his service except for the period between March 1967 and September 1967. His performance over this six-month period was rated as 2.8, slightly below the Navy standard, but it rebounded over the following six-month period to 3.4, which was the highest performance rating of his career. The fact that Petitioner's duty performance improved significantly after his exposure to the traumatic events that may have contributed to his PTSD condition severely undermines any argument that his PTSD condition rendered him unable to perform his duties.

(b) Petitioner was performing his duties in a presumably effective manner on the flight deck of the [REDACTED] on 23 September 1968, just three days before his administrative separation for unsuitability was initiated and he was transferred to [REDACTED] to await a decision by the CNP. He was then relied upon by the command to assist with the investigation of the accident. The Board finds it highly unlikely that the command would have employed Petitioner in this capacity if there were any question regarding his ability to do so.

(c) After two weeks of direct observation of and interaction with Petitioner, the [REDACTED] Chief of Neuropsychiatric Services recommended that Petitioner be returned to full duty. As this provider had a professional obligation to act in both the Petitioner's and the Navy's best interests, this recommendation is compelling evidence that there was nothing about Petitioner's presentation at the time which raised concerns that continued service would jeopardize his health. The record of this two-week hospitalization reflects that Petitioner left [REDACTED] with improved insight and motivation to adapt to Navy life.

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(d) Petitioner's PTSD condition did not compel him to engage in misconduct. As noted previously, Petitioner's record of misconduct in the Navy consisted of only a two-day UA in April 1968, which ended upon his voluntary return to the [REDACTED]. This was extremely minor misconduct, which had no bearing on his discharge. The fact that Petitioner remained capable of conforming his conduct to standards suggests that his PTSD condition did not render him unfit.

(e) Even assuming, as the Board did through the application of liberal consideration to his claim, that Petitioner had a nascent PTSD condition prior to his discharge from the Navy, his presentation of PTSD symptoms during his naval service was so minimal that his condition would not have raised any question regarding his ability to perform the duties of his office, rank, grade, or rating. While his symptoms may have worsened in the years following his discharge, such manifestations would not retroactively render Petitioner unfit during his naval service.

(f) Upon his discharge from the Navy, Petitioner returned to school at the University of [REDACTED] to pursue a Bachelors of Fine Arts degree. Although such a pursuit is unrelated to the duties that he was expected to perform onboard the [REDACTED], this suggests that Petitioner left the Navy with a functional capacity which would translate to the ability to perform his duties. It was only after he learned of the suicide of one of his friends that his PTSD was reportedly triggered and that he claims to have become unable to continue with his studies. That occurrence, however, is irrelevant to the analysis of whether he was able to perform his duties while in the Navy.

(4) The four previous Board decisions that Petitioner cited as precedent for the relief that Petitioner seeks in the present case are clearly distinguishable and do not support the relief that he requests.<sup>39</sup> In each of those cases, the applicant sought to have the characterization of service resulting from their misconduct-based discharges upgraded based upon their claimed PTSD conditions. In accordance with reference (b), the Board applied liberal consideration to these claims, and found that the claimed PTSD conditions mitigated the misconduct which resulted in their discharge. Essentially, the analysis discussed in paragraph 6(b)(2) above was different for these cases than it is in the present case. By contrast to each of these cases, Petitioner did not seek an upgrade to his characterization of service. Rather, he sought to recharacterize the basis for his discharge. As such, the previous decisions cited by Petitioner provided no precedential value for Petitioner's case.

d. Despite not specifically requested by Petitioner, the Board also reviewed Petitioner's application in accordance with the guidance of reference (d). Among other considerations, reference (d) directs the Board to consider 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" in determining whether to grant relief on the basis of an injustice.<sup>40</sup> A Service member under the same circumstances today would likely be discharged just as Petitioner was, but would not reasonably expect that his DD

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<sup>39</sup> In enclosure (8), Petitioner requested that the Board take into consideration its previous decisions in Docket Nos. 13255-14, 1100-14, 5850-14, and 3349-14. In each of those cases, the Board applied liberal consideration to a claimed PTSD condition and upgraded the applicant's characterization of service.

<sup>40</sup> See paragraph 6f of the attachment to reference (d).



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Form 214 would include a traceable reference to the fact that he was discharged for unsuitability due to a personality disorder. As such, the Board finds an injustice in the fact that Petitioner must continue to disclose personal and potentially embarrassing and stigmatizing medical information whenever he has reason to use his DD Form 214 to prove his previous naval service while similarly situated Service members discharged today under the same or similar circumstances would not. For this reason, the Board found that the reason and authority for Petitioner's discharge reflected on his DD Form 214 should be changed to "BUPERS MANUAL ART. C-10306 21L."<sup>41</sup>

7. RECOMMENDATIONS. 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:

a. That Petitioner be issued a new DD Form 214 reflecting that the reason and authority for his discharge was "BUPERS MANUAL ART. C-10306 21L" (i.e., "Other Good and Sufficient Reasons (Non-Derogatory) when Determined by Proper Authority"). All other entries currently reflected on his DD Form 214 are to remain unchanged.

b. That the discharge certificate issued to Petitioner in 1968 be reviewed to determine whether it makes any reference to Petitioner's unsuitability and/or personality disorder.<sup>42</sup> If so, that Petitioner be issued a new discharge certificate without such references which corresponds to the other relief granted herein.

c. That a copy of this record of proceedings be added to Petitioner's naval record.

d. That no further corrective action be taken on Petitioner's naval record.

8. 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.

9. Pursuant to the authority delegated to me pursuant to SECNAVINST 5420.193, the foregoing action of the Board is hereby approved and ordered executed.

10/31/2023

[REDACTED]

Executive Director

Signed by [REDACTED]

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<sup>41</sup> Per reference (e), this authority and code indicates that Petitioner was discharged for "[o]ther good and sufficient reasons (non-derogatory) when determined by proper authority." It is the closest 1968 analogue that the Board could find to what would today be described as "Secretarial Authority."

<sup>42</sup> If a copy of Petitioner's discharge certificate is not available for review, the Board directs that Navy Personnel Command determine whether the 1968 version of the DD Form 256N reflected on Petitioner's DD Form 214 would have included reference to the reason and authority for his discharge, and take action as appropriate consistent with this decision.