



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

[REDACTED]
Docket No: 456-17
NOV 06 2017

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN, [REDACTED]

Ref: (a) 10 U.S.C. §1552
(b) SECDEF Memo of 3 Sep 14 "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD"
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) In-service PTSD diagnosis of 13 December 1994
(4) Subject's naval record (excerpts)
(5) BUMED memo 5740 Ser M34/17UM34175 of 9 June 17

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy filed enclosure (1) with this Board requesting that her general under honorable conditions (GENERAL) characterization of service be changed in light of current guidelines as reflected in references (b) and (c). Enclosures (1) through (5) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 25 July 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, applicable statutes, regulations, policies, in-service PTSD diagnosis, and an advisory opinion (AO) provided by Navy Bureau of Medicine and Surgery (BUMED).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 16 March 1992. She had one NJP on 5 March 1993 for failure to go to her appointed place of duty. After which she reports that she got serious about her career.

d. Petitioner was scheduled to attend Air Traffic Control School when she found out she was pregnant. She consulted with her command and was given an ultimatum that she would not be able to attend A School if she had the child. She said she felt pressured by her command and ultimately aborted the pregnancy 4 days later - September 6, 1993. She reports emotional repercussions from the abortion and was counseled by a chaplain and family service center counselor about her grief reaction to the abortion, which included insomnia and tearfulness and led to excessive drinking.

e. During the period from 3 February to 14 December 1994, she received three non-judicial punishments (NJP) for the following offenses: two specifications of failure to go to appointed place of duty, two specifications of failure to obey a lawful order or regulation, and drunk and disorderly.

f. Subsequently, she was notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. She elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). On 2 February 1995, the ADB recommended a General under honorable conditions discharge by reason of misconduct due a pattern of misconduct. The discharge authority approved this recommendation and on 12 April 1995, she was discharged with a General characterization of service.

g. On 18 January 2017, Petitioner requested consideration of her case based on an assertion of an undiagnosed and untreated service connected post-traumatic stress disorder (PTSD). Based on current BCNR policy and guidance, the Board requested an advisory opinion from BUMED, the office having cognizance over the subject matter. The advisory opinion states that the request has merit and warrants favorable action. See enclosure (5).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (5), the Board concludes that Petitioner's request warrants partial relief. Additionally, the Board reviewed her application under the guidance provided in references (b) and (c). Specifically, the Board considered whether her application was the type that was intended to be covered by this policy.

The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The memorandum further explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and

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diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge. In this regard, based upon her record of service, to include her in-service trauma, partial relief should be granted, specifically her Narrative Reason for Separation should be changed from Misconduct to Secretarial Authority.

The Board notes Petitioner's misconduct and does not condone her actions. However, the Board's decision is based on Petitioner's evidence as reflected in her in-service PTSD counseling, and subsequent alcohol dependence, and emotional repercussions. The Board concluded that the PTSD condition existed at the time of her misconduct, and subsequently resulted in her general discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct she committed while on active duty since this condition outweighed the severity of the misconduct. With that being determined, the Board concludes that no useful purpose is served by continuing to characterize the Petitioner's Narrative Reason for Separation as Misconduct, and changing the Narrative Reason for Separation to Secretarial Authority is now more appropriate. Further the Board felt that due to Petitioner's early NJP, a fully honorable characterization of service is not warranted.

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

RECOMMENDATION:

That Petitioner's naval record be corrected to show that her Narrative Reason for Separation was Secretarial Authority on 12 April 1995, vice Misconduct actually issued on that day.

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215).

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

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 18 January 2017.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

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

[REDACTED]
Executive director