



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

[REDACTED]  
Docket No: 5491-17  
MAR 23 2018

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]  
[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"  
(d) PDUSD Memo of 25 Aug 17 "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"

Encl: (1) DD Form 149 (NR20170005491)  
(2) Case summary  
(3) Department of the Navy, Board for Correction of Naval Records Medical Service Corps Advisory Opinion Docket No. 5491-17 of 16 January 2018

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting correction to his Certificate of Release or Discharge from Active Duty (DD Form 214) to reflect a change to his characterization of service from other than honorable to general or honorable, a change to his narrative reason for separation, and a change to his separation authority.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 February 2018, 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 his naval service records, and applicable statutes, regulations, and policies.

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

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

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

c. Petitioner enlisted in the Navy and began a period of active duty service on 14 November 1988. In June of 1990, Petitioner began struggling with mental health difficulties. Petitioner's medical record reflects notes from 14 June 1990, which state that Petitioner suffered an episode of crying and hitting his head on the wall.

d. In October 1990, Petitioner tested positive for marijuana use. Petitioner received nonjudicial punishment (NJP) on 13 November 1990, for wrongful use of a controlled substance. He remained on active duty in the Navy, completed Level II treatment on 26 November 1996, and continued his service. The Zero Tolerance Policy in effect at the time allowed for the retention and treatment of lower-ranked Sailors who possessed "exceptional potential for further service." Petitioner contends that he remained on active duty pursuant to this exception.

e. On 7 December 1990, Petitioner was again seen by medical and reported suffering from anxiety and depression. The medical notes state that Petitioner "is responsible for his behavior and should be held accountable for the same." Petitioner was diagnosed with anxiety and depression on 18 December 1990.

f. On 16 January 1991, Petitioner was seen by a clinical social worker at [REDACTED] Naval Hospital. In May 1991, Petitioner was again seen by medical; the treatment notes indicate that Petitioner had been drinking the night prior and hit his head on the wall, and that he had suicidal ideation with a four-month history of anxiety and depression.

g. On 13 May 1991, Petitioner received NJP for unauthorized absence.

h. On 14 May 1991, administrative separation proceedings were initiated against Petitioner on the basis of drug abuse. Petitioner contends that the separation proceedings were unjustly based on his October 1990 positive urinalysis. Petitioner was notified of his rights on 7 June 1991, and waived his right to appear before an administrative separation board.

i. Petitioner was discharged from the Navy on 2 August 1991, on the basis of Misconduct – Drug Abuse (Use). He received an other than honorable characterization of service. His separation authority reads "MILPERSMAN 3630620" and his separation code is "HKK."

j. As part of the review process, a member of a Department of the Navy's Medical Service Corps reviewed Petitioner's assertions and the available records, and issued a favorable Advisory Opinion dated 16 January 2018, concluding that there is sufficient evidence to support that Petitioner's "in service diagnosed mental health conditions can be attributed to his military service. . . and that his misconduct can be attributed to those mental health conditions." Enclosure (3).

k. The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors, such as the Petitioner's mental health struggles during his time in the Navy and his claim of error and injustice with respect to basing the administrative separation

proceedings on the October 1990 drug use. Petitioner's in-service mental health challenges were fully and carefully considered by the Board in light of references (b)-(d). The Board also reviewed the supporting information submitted by Petitioner and the favorable Advisory Opinion concluding that there is sufficient evidence to support that Petitioner's misconduct can be attributed to those mental health conditions.

l. The Board concurred that Petitioner's mental health struggles contributed to his misconduct and that he is entitled to the partial relief of an upgrade to his service characterization from other than honorable to general.

m. The Board noted Petitioner's contentions that he was improperly separated in violation of the Navy Drug Abuse Policy (separation in May 1991 on the basis of drug abuse after originally being retained in October 1991), improper notification of the grounds for administrative separation and denial of due process based on a failure to be informed of all of the charges against him, improper waiver of his right to appear before an administrative separation board, and injustice because his severe mental health issues caused his separation.

n. The Board reviewed the available administrative separation record in light of Petitioner's contentions and found that basing Petitioner's separation on the October 1991 drug use in May 1991 was unjust, but warranted a change to his service characterization only. The Board declined to change Petitioner's narrative reason for separation, separation authority or separation code because the Board found that although Petitioner's wrongful use of a controlled substance was mitigated by his mental health issues, Petitioner did commit the misconduct of wrongful use of a controlled substance in October 1991. The Board noted that Petitioner's command could have initiated separation proceedings on the basis of drug abuse in the fall of 1991, rather than continue him on active duty. The Board found that the command's failure to seek a discharge on the basis of drug abuse earlier than May 1991 was unjust and warranted a change to Petitioner's discharge characterization. The Board noted that Petitioner's overall trait average was 3.24 at the time of his discharge. Based on the trait average and the nature of the injustice, the Board found that a general characterization of service was warranted.

o. The Board found that the narrative reason for separation, separation authority or separation code accurately reflect Petitioner's in-service actions, and although those actions are mitigated by his mental health issues, correction to his record should be limited to the characterization of service only. Given the nature of the misconduct, the Board determined it should remain reflected on his DD Form 214 in the narrative separation reason, separation authority, and separation code.

p. Regarding Petitioner's request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to its understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

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

## CONCLUSION

That Petitioner be granted partial relief with respect to an upgrade to his discharge characterization, from other than honorable to general. That no further corrective action is warranted.

In view of the above, the Board directs the following corrective action.

## RECOMMENDATION

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty to show he was discharged from the Navy with a general characterization of service.

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 22 June 2017.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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

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