



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

[REDACTED]
Docket No: 7161-17
MAR 23 2018

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
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 (NR20170007161)
(2) Case summary
(3) Medical Corps, Advisory Opinion, DS Docket No. 7161-17, dtd 30 Nov 17

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting an upgrade to his service characterization. Enclosures (1)-(2) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 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 his first period of active duty service on 6 December 1989. Petitioner has one nonjudicial punishment (NJP) on 26 January 1991, for a period of unauthorized absence (UA) from 18 November 1990 through 17 December 1990. The Petitioner honorably completed his first period of service, on 8 November 1993, and immediately reenlisted. On 9 November 1993, Petitioner began a second period of enlistment. He completed his second enlistment honorably, and was discharged on 4 November 1997. Petitioner reenlisted on 5 November 1997, for his third and final period of active duty service.

d. On 31 December 1997, Petitioner began a period of UA; he returned on 5 January 1998. Petitioner was discharged from the Navy on 9 June 1998 on the basis of misconduct, and received an other than honorable characterization of service.

e. The Board noted that Petitioner's available service record does not contain his complete administrative separation package.

f. On 26 October 2011, Naval Discharge Review Board determined that Petitioner's other than honorable characterization of service, his Separation Reason, and his Narrative Reason for separation (Misconduct) were properly issued and no charge to his record was warranted.

g. Veteran's Affairs treatment notes dated 22 November 2017 indicate that Petitioner had received approximately three months of care and that he had been diagnosed with Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder.

h. A Medical Corps officer in the Navy reviewed Petitioner's request for an upgrade to his discharge characterization in light of the mental health diagnoses, and issued an Advisory Opinion (AO). Enclosure (3). The AO noted that Petitioner's request for correction to his service characterization indicates that Petitioner went UA after he felt he had wrongly been denied leave to study for his advancement exam to the grade of chief. The AO found that "there is insufficient evidence to support . . . that he suffered from PTSD at the time of the service." The AO was provided to Petitioner and given 30 days in which to provide a response or a rebuttal. After the 30-day period passed without any action by Petitioner, the matter was taken to the Board.

i. The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors, such as the Petitioner's PTSD diagnosis. Petitioner's assertion of suffering from PTSD was fully and carefully considered by the Board in light of references (b)-(d). In accordance with current guidance, the Board gives liberal and special consideration to treatment documentation of PTSD symptoms and medical determinations of the existence of service-connected PTSD.

j. After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish a connection between Petitioner's diagnosis of PTSD and his misconduct of UA. The Board relied on Petitioner's own statement indicating that he was frustrated by the denial of leave to prepare for his advancement exam. The Board concluded that Petitioner appeared to have gone UA because of the denial of leave, and that the diagnosis alone did not support a finding that the PTSD was connected to his misconduct. The

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Board did note that Petitioner had two periods of honorable service which warrant reflection on his DD Form 214. The Board concluded that Petitioner is entitled to partial relief. Although he is not entitled to an upgrade to his other than honorable service characterization, Petitioner is entitled to have his first two periods of honorable active duty service.

k. The Board, however, determined that Petitioner's DD Form 214 should acknowledge Petitioner's honorable completion of his first two periods of enlistment from 6 December 1989 through 4 November 1997.

l. The Board determined that Petitioner completed a distinct period of honorable service from enlistment from 6 December 1989 through 4 November 1997. The Board reviewed Petitioner's service for that period and concluded that Petitioner's characterization of service was honorable. The Board found that as a matter of justice, Petitioner's honorable period of service should be reflected on his DD Form 214.

m. The Board, in its review of Petitioner's service record and application, carefully weighed all factors and determined that Petitioner is entitled to partial relief with respect to the inclusion of his honorable period of service from 6 December 1989 through 4 November 1997. The Board limited its relief to the period of honorable service only.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the honorable completion of his first enlistment, that Petitioner receive partial relief.

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

RECOMMENDATION:

That Petitioner be issued a DD Form 215, Certificate of Release or Discharge from Active Duty to show his completion of a general under honorable period of service from 6 December 1989 through 4 November 1997.

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 24 August 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

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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