



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

[REDACTED]
Docket No: 7961-17

MAY 03 2019

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

Subj: REVIEW NAVAL RECORD OF FORMER [REDACTED] USN,
XXX-XX [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 with attachments
(2) Subject's naval record (excerpts)
(3) 22 Nov 17 Advisory Opinion

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his other than honorable (OTH) characterization of service be changed in light of current guidelines as reflected in references (b) through (d).

2. The Board consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 January 2019, 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 application, together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, and an advisory opinion (AO) dated 22 November 2017.

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

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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 waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 11 March 1986. On 27 May 1987, he admitted himself to the Department of Veterans Affairs (DVA) medical center in [REDACTED]. On 3 June 1987, he was discharged from the DVA medical center and diagnosed with an adjustment disorder and a personality disorder trait. On 10 May 1988, he was convicted by special court-martial (SPCM) of unauthorized absence (UA) totaling 300 days. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After waiving his procedural rights, his Commanding Officer (CO) recommended an other than honorable (OTH) discharge by reason of misconduct due to commission of a serious offense. The discharge authority approved this recommendation and directed separation under other than honorable conditions by reason of misconduct. On 8 August 1988, he was discharged.

d. On 22 September 2017, Petitioner requested consideration of his case based on an assertion of an undiagnosed and untreated service connected post-traumatic stress disorder (PTSD). Petitioner was provided an AO dated 22 November 2017, attached as enclosure (3). The AO opined that Petitioner suffered from PTSD at the time of his service which contributed to his misconduct.

CONCLUSION:

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

In this regard, based upon his record of service and the AO, Petitioner's characterization of service should be changed to General (Under Honorable Conditions). The Board noted Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in the AO. The Board was able to reasonably conclude that the PTSD condition existed at the time of Petitioner's misconduct, and subsequently substantially contributed to his OTH characterization of service. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. The Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been other than honorable, and re-characterization to a general discharge is now more appropriate. In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

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RECOMMENDATION:

That Petitioner's naval record is corrected to show that he was issued a General (Under Honorable Conditions) discharge on 8 August 1988, vice the OTH discharge previously issued.

That Petitioner is issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

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 September 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

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