



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

[REDACTED]
Docket No. 9244-23
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MILPERSMAN 1910-134, Separation by Reason of Defective Enlistment and Inductions – Fraudulent Entry into Naval Service
(c) MILPERSMAN 1900-120, Separation by Reason of Convenience of the Government – Medical Conditions Not Amounting To A Disability
(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) DODI 6130.03, Volume 1, Medical Standards for Military Service: Appointment, Enlistment, or Induction, 6 May 2018 (Change 4, 16 November 2022)

Encl: (1) DD Form 149 w/attachments
(2) DD Form 2808, Report of Medical Examination, 7 November 2019
(3) DD Form 214
(4) NAVPERS 1070/605, History of Assignments
(5) IWTC Corry Station CO Memo 1910 Ser N00L/052, subj: Report of Administrative Separation ICO [Petitioner], 24 March 2021
(6) NAVPERS 1910/31, Administrative Separation Processing Notice, 9 December 2020
(7) IWTC Certificate of Graduation
(8) IWTC Corry Station CO Memo 1910 N00L/Ser 163, subj: Administrative Discharge ICO [Petitioner], 9 December 2020
(9) NDRB Discharge Review Decisional Document, Docket No. [REDACTED]
(10) Department of Veterans Affairs Letter, 20 July 2021
(11) BCNR Memo Docket No: NR20230009244, subj: Advisory Opinion ICO [Petitioner], 25 April 2024
(12) Petitioner’s E-mail, subj: [Non-DoD Source] Re: Application for Military Record Correction – Request for Information (BCNR Docket #NR20230009244), sent Monday, April 29, 2024 @ 8:37:05AM
(13) Petitioner’s Counsel’s Letter, Re: [Petitioner] Docket No. NR20230009244 Our File No: 22-2862), 6 May 2024

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his discharge characterization be upgraded to honorable, his narrative

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

reason for separation changed to “Secretarial Authority,” and his reentry code changed to “RE-1.”

2. The Board considered Petitioner’s allegations of error or injustice on 17 May 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the equitable relief indicated below is warranted in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner’s naval record; and applicable statutes, regulations, and policies, to include reference (d).

3. Having reviewed all of the evidence of record pertaining to Petitioner’s allegations of error or injustice, the Board found 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 interests of justice to waive the statute of limitation and consider Petitioner’s application on its merits.

c. On 7 November 2019, Petitioner underwent a pre-enlistment physical examination in anticipation of his enlistment in the U.S. Navy. The examining provider noted no neurological or psychiatric abnormalities. See enclosure (2). Petitioner’s self-reported medical history is inexplicably absent from his naval record.¹ See enclosure (2).

d. Petitioner subsequently enlisted in the U.S. Navy and began a period of active duty service on 24 February 2020. See enclosure (3).

e. Petitioner reported for duty as a student at the [REDACTED]
[REDACTED] on 11 May 2020. See enclosure (4).

f. Approximately two months after his arrival at [REDACTED], Petitioner voluntarily informed his Leading Petty Officer (LPO) that he had Asperger’s Syndrome in response to questioning regarding why he was acting in a questionable manner in the barracks.² When questioned why this diagnosis was not in his enlistment records, he claimed that he was never asked about it during his enlistment process.³ See enclosure (1).

¹ Petitioner’s command noted the absence of this record at the time of his discharge in enclosure (5). It was reportedly due to the absence of this records that Petitioner’s command did not charge Petitioner with fraudulent enlistment in violation of Article 104a, Uniform Code of Military Justice (UCMJ), and pursue non-judicial punishment (NJP) against Petitioner.

² Petitioner recounted this conversation in the narrative for his previous application to the Naval Discharge Review Board (NDRB), which he included as an enclosure to his present application.

³ Petitioner later asserted that the Asperger’s diagnosis was made by a school psychologist at his high school in the context of assessing his disciplinary issues. This claim is supported by the high school education records that he provided. Accordingly, this diagnosis did not appear in any medical records which may have been reviewed during the enlistment process.

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

g. Petitioner was subsequently referred for a medical evaluation, which confirmed the diagnosis he disclosed to his LPO. According to his commander, Petitioner “willingly provided sufficient evidence to indicate a fraudulent enlistment.” His commander also opined that “[a]lthough no undesirable behavior was displayed by [Petitioner], it is not in the best interest of the Navy to retain him.” See enclosure (5).

h. According to Petitioner, his medical providers at Naval Hospital [REDACTED] stated that he would be recommended for a discharge for a condition not amounting to a disability pursuant to reference (c) on 10 August 2020. See enclosure (1).

i. On 2 October 2020, Petitioner successfully completed the Communications Signals Collection Course at [REDACTED] See enclosure (6).

j. On 9 December 2020, Petitioner was notified using through “notification procedures” that he was being processed for administrative separation by reason of fraudulent enlistment pursuant to reference (b), as evidenced by his “deliberate concealment of a medical condition prior to enlistment.” See enclosure (7).

k. Petitioner acknowledged this notice on the same day and waived his right to submit a statement in response. See enclosure (7).

l. By memorandum dated 9 December 2020, Petitioner’s command directed that Petitioner be administratively separated from the Navy under honorable conditions with a general discharge for fraudulent enlistment. See enclosure (8).

m. On 23 December 2020, Petitioner was administratively separated from the Navy under honorable conditions with a general discharge for fraudulent entry in accordance with reference (b). See enclosure (3).

n. In March 2021, Petitioner requested that the NDRB change his discharge to reflect a medical disability.⁴ On 29 June 2021, the NDRB unanimously determined that Petitioner met the requirements for separation by reason of fraudulent entry in accordance with reference (b), finding that Petitioner made a voluntary statement to his chain of command on or about 13 August 2020 that he had been previously diagnosed with Asperger’s Syndrome and that the documentation and statements provided for review did not refute the presumption that he deliberately failed to disclose his medical condition during the enlistment process.⁵ Accordingly, the NDRB determined that no change to Petitioner’s discharge for fraudulent entry was warranted. See enclosure (9).

o. On 20 July 2021, the Department of Veterans Affairs (VA) awarded Petitioner service connection for major depressive disorder (MDD) with a 30 percent disability rating. See

⁴ The NDRB lacked the authority to change Petitioner’s discharge in the manner requested.

⁵ The NDRB acknowledged Petitioner’s claim that he was never asked about and did not intend to deceive the Navy regarding his mental health condition, it found that there was multiple instances during the enlistment process when the Petitioner would have had the opportunity to offer the information to competent medical authority for consideration.

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

enclosure (8). Petitioner attributes this condition to the circumstances of his discharge and treatment after his condition was revealed. See enclosure (10).

p. Petitioner, through counsel, asserts that his discharge from the Navy for fraudulent entry was an injustice for the following reasons:

(1) He did not have a disqualifying condition and did not fraudulently enter the service. In support of this contention, he asserts that he was never diagnosed on the autism spectrum by any medical professionals;⁶ he proved that he could fully perform his military duties and had no unfitting conditions; and medical records during his active-duty service suggest that he was not diagnosed on the autism spectrum.

(2) He should have been processed for a medical separation. Specifically, Petitioner's counsel asserts that if, in fact, he had a disqualifying condition, he should have been processed for administrative separation for a condition not amounting to a disability pursuant to reference (c) rather than for fraudulent enlistment.⁷ In this regard, he asserts that he "genuinely believe that because he did not have a medical diagnosis regarding his apparent condition, then it [was]not required to be reported ... during the recruitment process."

(3) His punishment is disproportionate and an injustice based upon his honorable service and honorable post-service conduct. In this regard, Petitioner cites to the guidance of reference (d) for equitable relief, suggesting that nearly every factor stated is relevant to Petitioner's case. With regard to his post-service conduct, Petitioner asserts that he supports himself by working "all sorts of jobs ranging from fast food to being a meter reader."

See enclosure (1).

q. Because he based his claim for relief upon mental health considerations, the Board sought an advisory opinion (AO) from a licensed clinical psychologist. By memorandum dated 25 April 2024, the licensed clinical psychologist provided an AO for the Board's consideration. She opined that "it is difficult to under how [Petitioner] would not have known about [his autism spread disorder (ASD)]" given the comprehensive individual education plan which was put into place due to it. Based upon the available evidence, the licensed clinical psychologist opined that Petitioner had a preexisting mental health condition that could have precluded him from enlistment, but insufficient evidence that he was unaware of this condition. See enclosure (11).

r. By letter dated 6 May 2024, Petitioner responded to the AO referenced in paragraph 3q above through counsel.⁸ In this response, Petitioner's counsel asserts that the AO was not grounded in facts. Specifically, he asserts that the AO presupposes that Petitioner was properly diagnosed with Asperger's/ASD prior to military service and ignores several key pieces of

⁶ Petitioner's counsel insists that Petitioner was never diagnosed by a medical professional because the diagnosis was made by a "school psychologist" who possessed only a bachelor's degree in psychology.

⁷ Petitioner's counsel's argument in this regard is contradicted by his argument made in the first contention that Petitioner's condition did not interfere with his performance of duties.

⁸ Petitioner also sent a separate e-mail response to the AO, dated 29 April 2024. See enclosure (12).

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

evidence which show that this condition was not diagnosed by qualified medical professionals.⁹ Petitioner's counsel also noted that the psychological evaluation performed upon Petitioner in high school "does not definitively state that [Petitioner] was diagnosed with Aspergers/ASD, but rather "suggests that [he] meets the educational criteria as a student who is autistic." Petitioner's counsel further asserted that the testing methodology used to screen Petitioner for autism often revealed false positives, and that the AO failed to consider that ASD shares symptoms with numerous other medical conditions, making it possible that the "suggestion" of autism was misplaced. Finally, Petitioner's counsel noted that the AO does not address the fact that fraudulent enlistment requires an intent to deceive. See enclosure (13).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that equitable relief is warranted in the interests of justice.

The Majority found no error in Petitioner's discharge for fraudulent enlistment with a general (under honorable conditions) characterization of service. Per reference (b), "[m]embers may be separated for effecting a fraudulent enlistment ... by falsely representing or deliberately concealing any qualifications or disqualifications prescribed by law." Per reference (e), autism spectrum disorders are disqualifying for enlistment in the armed forces.¹⁰ The Majority found that the evidence reasonably established that Petitioner deliberately concealed his previous ASD diagnosis during his enlistment process. As such, his administrative separation on this basis was appropriate under the circumstances. In this regard, the Majority did not find credible Petitioner's claim that he did not believe it necessary to reveal his diagnosis since it was issued by a "school psychologist." First, Petitioner immediately volunteered the existence of his Asperger's diagnosis to his LPO when questioned about his behavior, which severely undermines his claim that he did not believe that he had a reportable mental health condition. Second, it simply strains credibility to suggest that Petitioner consciously distinguished between a diagnosis rendered by a "school psychologist" and a credentialed psychologist as a teenager when the former was based upon a comprehensive battery of psychological tests and served as the basis for his comprehensive educational plan was based upon it.¹¹ The Majority concurred with the conclusion reached by the NDRB that Petitioner would have had multiple opportunities and a responsibility to disclose this diagnosis during the enlistment process; that responsibility would not have been caveated with the proviso that the diagnosis was rendered by a credentialed mental health professional. As such, the Majority concluded that Petitioner deliberately concealed the existence of a diagnosis which may have disqualified him from enlistment.

The Majority found the accuracy of Petitioner's diagnosis to be largely irrelevant, as he was discharged pursuant to reference (b) for fraudulent enlistment due to his deliberate concealment of a diagnosis that he clearly should have revealed and not pursuant to reference (c) for a condition not constituting a disability. It was the existence of the diagnosis itself, and

⁹ See footnote 6.

¹⁰ See paragraph 6.28.c.

¹¹ The Majority acknowledged Petitioner's comments in enclosure (12), but did not find credible his claim that the education plan was not comprehensive given the scope of the plan included in the record.

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

Petitioner's deliberate failure to disclose it during his enlistment process, which matters in this regard, and not whether he actually had the condition diagnosed. For this reason, the Majority found no relevance to the Petitioner's argument that the diagnosis was not confirmed by Navy medical personnel.¹²

The Majority found no merit to Petitioner's contention that he should have been discharged pursuant to reference (c) rather than pursuant to reference (b). Separation pursuant to reference (c) requires that the medical condition interferes with the member's performance of duty. As Petitioner himself has acknowledged, the evidence reflects that Petitioner's condition did not interfere with his performance of duties. Petitioner completed the course of instruction at [REDACTED] and demonstrated no inability to perform his duties. Accordingly, discharge pursuant to reference (c) was not an option. The Majority speculated that it was this realization which resulted in the decision to process Petitioner for separation pursuant to reference (c) rather than pursuant to reference (b).

In addition to reviewing the circumstances of Petitioner's discharge at the time it was administered for error or injustice, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (d). In this regard, the Majority considered, among other factors, that Petitioner was forthright and cooperative in disclosing his previous diagnosis when questioned regarding his behavior; that Petitioner's commander acknowledged that Petitioner demonstrated no undesirable behavior while in the Navy and that there is no misconduct in his record; that Petitioner completed the [REDACTED] course of instruction while pending potential administrative separation; that Petitioner actively sought to remain on active duty after disclosing his condition; that Petitioner likely would have been discharged pursuant to reference (c) rather than pursuant to reference (b) if he had qualified for the former; that Petitioner's relatively short service was otherwise honorably served despite the challenges presented by his condition; that Petitioner apparently developed MDD during his short military service, as evidenced by the VA service connection determination; and Petitioner's post-service efforts to overcome both the stigma of his discharge and the challenges presented by his condition. Based upon these factors, the Majority determined that no purpose is served by Petitioner's stigmatizing discharge and therefore recommended relief on a purely equitable basis. The Majority did, however, find that Petitioner's reentry code continues to serve a valuable purpose under the circumstances and therefore excluded that from the relief recommended.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 23 December 2020 was characterized as "Honorable"; that the narrative reason for his separation was

¹² Frankly, the Majority found that it would be unnecessary for naval medical authorities to perform the same battery of psychological examinations that had previously been conducted given that those results were available for review and Petitioner's presentment tended to confirm the diagnosis.

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

“Secretarial Authority”; that his separation authority was “MILPERSMAN 1910-164”; and that his separation code was “JFF.” All other entries reflected on Petitioner’s current DD Form 214, to include his reentry code, are to remain unchanged.

That Petitioner be issued an Honorable Discharge Certificate.

That a copy of this report of proceedings be filed in Petitioner’s naval record.

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

MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the Majority conclusion in all regards except with regard to the scope of equitable relief. In this regard, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in accordance with reference (d) and considered the same potentially mitigating factors as did the Majority. However, the Minority reached a different conclusion than did the Majority. Specifically, the Minority determined that the mitigating circumstances were significantly offset by the fact that Petitioner deliberately concealed critical information during his enlistment process. This was a blatant integrity violation which the Minority believed to be more than sufficient to justify the less than fully honorable characterization of Petitioner’s service. The Minority also disagreed with the Majority’s conclusion that there was no evidence of misconduct in Petitioner’s record, as fraudulent enlistment is a violation of Article 104(a), UCMJ, and carries a maximum punishment of up to five years of confinement and a dishonorable discharge. According to enclosure (5), it was only due to poor record keeping that this misconduct did not result in NJP. For these reasons, the Minority determined that Petitioner is entitled to far less equitable relief than did the Majority. Specifically, the Minority determined that Petitioner’s characterization of service was, and remains appropriate under the circumstances, but that equitable relief in the form of a change to his narrative reason for separation is warranted in the interests of justice.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner’s naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that the narrative reason for his separation on 23 December 2020 was “Secretarial Authority”; that his separation authority was “MILPERSMAN 1910-164”; and that his separation code was “JFF.” All other entries on Petitioner’s current DD Form 214, to include his characterization of service and reentry code, are to remain unchanged.

That a copy of this report of proceedings be filed in Petitioner’s naval record.

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

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

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 titled matter.

5. The foregoing action of the Board is submitted for your review and action.

7/30/2024

[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

X MINORITY Recommendation Approved (Partial Relief – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)

___ Board Recommendation Disapproved (Deny Relief – I concur with the Board's conclusion that there was no error or injustice in Petitioner's discharge with a general (under honorable conditions) characterization of service for fraudulent enlistment when it was administered, but disagree with the Board that any equitable relief is warranted in the interests of justice. Specifically, I found that the aggravating factors cited by the Minority far outweighed all of the mitigating factors combined, and that equitable relief was therefore not warranted in the interests of justice.)

___ Petitioner's Request Approved (Full Relief – I generally concur with the Majority conclusion, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I found that the interests of justice would be better served by removing all stigma from Petitioner's naval record by changing Petitioner's adverse reentry code in addition to the other relief recommended by the Majority. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner's reentry code on his new DD Form 214 is to reflect "RE-1."

[REDACTED]