



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

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Docket No. 10879-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ■■■■■■■■■■ USN,
XXX-XX-■■■■■

Ref: (a) 10 U.S.C. §1552
(b) USD (P&R) Memo, "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, 25 August 2017
(c) 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
(d) MILPERSMAN 1910-146, Separation by Reason of Misconduct – Drug Abuse

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) ■■■■■■■■■■ Message, subj: Report of Urine Sample Tests
(OPNAV Report 5350-4), dtg 042304Z SEP 01
(4) NAVPERS 1070/607, Court Memorandum, 6 September 2001
(5) Administrative Separation Processing Notice – Administrative Board Procedure, 1 October 2001
(6) ■■■■■■■■■■ CO Memo 5800 Ser 00/062, subj: [Petitioner]
Recommendation for Administrative Separation, 1 October 2001
(7) Petitioner's Memo, subj: Request for General Discharge, 10 October 2001
(8) ■■■■■■■■■■ Message, subj: Admin Separation ICO [Petitioner],
dtg 191710Z OCT 01
(9) Integrated Treatment Services Letter (Summary of Petitioner's treatment), *undated*
(10) BCNR Memo Docket No: NR20230010879, subj: Advisory Opinion ICO
[Petitioner], 22 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 characterization of service be upgraded to honorable and that his narrative reason for separation be changed.

2. The Board considered Petitioner's allegations of error or injustice on 3 July 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the

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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 references (b) and (c).

3. Having reviewed all 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. Petitioner enlisted in the Marine Corps and began a period of active duty service on 12 June 1998. See enclosure (2).

d. In August 2001, Petitioner submitted a urine sample which tested positive for the presence of tetrahydrocannabinol, indicating the use of marijuana. See enclosure (3).

e. On 6 September 2001, Petitioner received nonjudicial punishment for the wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice. He was reduced to the paygrade of E-3. See enclosure (4).

f. On 1 October 2001, Petitioner was formally notified that he was being processed for administrative separation for misconduct due to drug abuse via administrative board procedures. This notice informed Petitioner that he could be discharged under other than honorable (OTH) conditions. See enclosure (5).

g. Upon receipt of the notice referenced in paragraph 3f above, Petitioner waived his right to request an administrative separation board and to consult with counsel, but elected to exercise his right to submit a statement for consideration by the separation authority. See enclosure (5).

h. By memorandum dated 1 October 2001, Petitioner's commander recommended that Petitioner be discharged from the Navy under OTH conditions for misconduct due to drug abuse. In making this recommendation, Petitioner's commander commented that Petitioner "has no potential for further Naval service due to use of a controlled substance. [Petitioner] has been a satisfactory making progress [sic] toward proficiency as a Postal Clerk. His drug abuse, however, warrants an [OTH] discharge." See enclosure (6).

i. By memorandum dated 10 October 2001, Petitioner provided a statement to the separation authority requesting that he receive a general discharge.¹ See enclosure (7).

¹ Petitioner's statement read as follows:

1. I would like to take this opportunity to resolve any ambiguities of the alleged charges which has placed my personal integrity into question, and provide reasonable justification based on the specifics of this particular

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j. By message dated 19 October 2001, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (8).

k. On 26 October 2001, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (2).

l. On 5 November 2020, Petitioner was diagnosed with childhood post-traumatic stress disorder (PTSD).² See enclosure (9).

m. Petitioner claims that he struggled with mental health concerns since childhood and that his service in the Navy aggravated and amplified his then-unknown mental health conditions. These conditions destroyed his first marriage and led to narcotic use as a coping mechanism, which resulted in his discharge. He asserts that his condition should have been recognized and diagnosed during his naval service, which would have prompted treatment and resulted in a more favorable separation from the service. See enclosure (1).

n. Because he based his request for relief upon his claimed mental health conditions, Petitioner's application and records were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board's consideration. This AO noted that although Petitioner provided evidence of a PTSD diagnosis temporally remote and apparently unrelated to his military service, the available records are not sufficiently detailed to establish clinical symptoms in service or to provide a nexus with Petitioner's misconduct. Based upon the available evidence, the licensed clinical psychologist opined that there is post-service evidence of a PTSD diagnosis, but insufficient evidence to attribute his misconduct to PTSD.³ See enclosure (10).

MAJORITY CONCLUSION:

case why a General Discharge from Naval Service is warranted [sic]. I currently have over 3 years unbroken active duty service and throughout my time in service, I have performed all duties and assigned responsibilities in a highly professional manner, adhering to all pertinent rules and regulations within the ideal sailor's purview. I've been manned and ready from the beginning while stationed aboard [REDACTED] as well as [REDACTED] to answer all bells when called upon by high authority. I've made several good choices throughout life as well as bad, but joining the United States Navy is among those great methodical decisions. Recently, without consciously thinking I elected to abuse a controlled substance not considering the immediate effects of my poor decision and how it would impact my life and the lives of my wife and 2 yr old son. I have compromised my personal integrity as well as the covenant responsibilities of being the sole provider in my household.

2. In closing Sir, if I can't be a man and provide for my family than [sic] I'm nothing. I ask that you don't hinder me from giving my son the life that I never had. I know what has happened was wrong and I'm truly sincere. I ask that you find it in your heart to see that I am sorry and ask that I receive a General Discharge.

² Petitioner's condition was classified as Developmental Trauma Disorder. This diagnosis was based in part upon Petitioner's response to the questions on an Adverse Childhood Experience Questionnaire, in which Petitioner endorsed physical and verbal abuse at the hands of his parents.

³ A copy of this AO was provided to Petitioner for comment by letter dated 22 May 2024, but Petitioner failed to respond within the 30 days provided.

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

The Majority found no error or injustice in Petitioner's discharge under OTH conditions for misconduct due to drug abuse at the time it was administered. In accordance with reference (d), processing for administrative separation was mandatory for a urinalysis tested and confirmed positive at the Navy drug screening laboratory. Per enclosure (3), a urine sample submitted by Petitioner was tested and confirmed positive at the Navy drug screening laboratory. There was no evidence presented to call the results of the urinalysis into question, so his administrative separation was not only authorized but such processing was mandated. Additionally, Petitioner admitted to his use of marijuana in both his letter to the separation authority and in his application to the Board. It appears from the record that all procedural requirements were satisfied for Petitioner's administrative separation, as Petitioner was properly notified and both voluntarily elected and exercised his rights before the separation authority ordered his separation. Finally, Petitioner was notified pursuant to the administrative board procedures and voluntarily waived his right to an administrative separation board hearing, so an OTH characterization of service was authorized for his misconduct under the circumstances.

Because Petitioner based his request for relief upon his claimed mental health condition, the Majority reviewed Petitioner's application pursuant to the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition and its effect upon the misconduct for which he was discharged. Applying very liberal consideration, the Majority found it plausible that Petitioner's preexisting PTSD-like condition mitigated the misconduct for which he was discharged. Petitioner has recently been diagnosed with a PTSD-like condition arising from the trauma of his childhood, which means that he would have been suffering the effects of this then-unknown condition throughout his naval service. As marijuana use may be indicative of self-medication and/or a coping mechanism to deal with the symptoms of such a condition, the Majority found that Petitioner's misconduct may have been mitigated by his then-undiagnosed mental health condition through the application of very liberal consideration.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its effect upon the misconduct for which Petitioner was discharged in accordance with reference (b), 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 (c). In this regard, the Majority considered, among other factors, the potentially mitigating effect of Petitioner's pre-existing mental health condition upon the misconduct for which he was discharged, as discussed above; the totality of Petitioner's naval service, which includes no other recorded misconduct and appears to have been otherwise meritorious; that Petitioner demonstrated apparently sincere remorse for his misconduct in his statement to the separation authority; that Petitioner's commander stated in his recommendation to the separation authority that Petitioner had made satisfactory progress toward proficiency in his specialty; the relatively minor, non-violent, and isolated nature of Petitioner's misconduct; that Petitioner would not reasonably expect to be discharged OTH conditions under similar circumstances today; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Majority determined that Petitioner's characterization of

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service should be equitably upgraded to general (under honorable conditions) and his narrative reason for separation changed to "Secretarial Authority" to spare him the continued stigma of his discharge.

Although the Majority found the mitigating circumstances to be sufficient to justify the equitable relief described above, it did not find those mitigating circumstances sufficient to justify the truly extraordinary relief requested by Petitioner. As noted above, there was no error or injustice in Petitioner's discharge for misconduct due to drug abuse. Accordingly, the Majority found that significantly more justification would be needed to warrant the upgrade of Petitioner's narrative reason for separation to fully honorable.

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 26 October 2001 was characterized as "General (under honorable conditions)"; that the narrative reason for his separation 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 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.

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 that there was no error or injustice in Petitioner's discharge from the Navy under OTH conditions for misconduct due to drug abuse when it was administered.

Like the Majority, the Minority also applied liberal consideration to Petitioner's claimed mental health condition and its effect upon the misconduct for which he was discharged in accordance with reference (b). In this regard, the Minority did not doubt Petitioner's claim that he entered the Navy with a preexisting PTSD-like condition resulting from his childhood trauma. However, even applying liberal consideration, the Minority agreed with the AO's finding that there was insufficient evidence of any nexus between Petitioner's mental health condition and his misconduct. In this regard, the Minority recognized that individuals often use marijuana to self-medicate or to cope with undiagnosed and untreated mental health condition. However, Petitioner's naval record is devoid of any other misconduct. In fact, Petitioner highlighted his otherwise honorable service and the absence of any such misconduct in his letter to the separation authority. The Minority would have expected to find more misconduct than a single

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instance of drug use during Petitioner's more than three years of service if, in fact, he was suffering as much as he now claims. The absence of such misconduct suggests that Petitioner was not so adversely affected. Accordingly, the Minority did not find Petitioner's mental health condition to mitigate his misconduct.

The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority. However, having failed to find Petitioner's mental health condition mitigated the misconduct for which he was discharged, the Minority applied significantly lesser weight to the mitigating circumstances than did the Majority which found otherwise. Accordingly, the Minority found the severity of Petitioner's misconduct to outweigh the mitigating circumstances, and that equitable relief is therefore not warranted in the interests of justice.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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.

8/23/2024

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- X MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)
- MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)
- Petitioner’s Request Approved (Full Relief – I generally concur with the Majority conclusion that equitable relief is warranted under the circumstances, 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 mitigating circumstances did so significantly outweigh the severity of Petitioner’s very minor misconduct such as to justify the relief requested. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as “Honorable” and his reentry code is to be changed to “RE-1.” Petitioner shall also be issued an Honorable Discharge Certificate.

