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COMMITTEE ON ARMED SERVICES

STATEMENT OF

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BEFORE THE

MILITARY PERSONNEL SUBCOMMITTEE

HOUSE COMMITTEE ON ARMED SERVICES

ON

REVIEW BOARD AGENCY

MARCH 2, 2017

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ARMED SERVICES

Good morning Chairman Coffman, ranking member Speier, and distinguished members of the House Armed Services Military Personnel Subcommittee. I'm Robert Woods, with the Department of the Navy. I'm the Assistant General Counsel for Manpower and Reserve Affairs; senior legal counsel for the Assistant Secretary of the Navy for Manpower and Reserve Affairs. On behalf of the men and women of the various Naval review boards, I thank you for the opportunity to appear before you today.

I note that your invitation describes this hearing as an "Overview of the Military Review Board Agencies." I also understand that you are particularly interested in reviewing our discharge review and upgrade processes, especially as they pertain to those petitions that involve Navy and Marine Corps Veterans who received other than honorable discharge characterizations and are victims of sexual assault during their service (Military Sexual Trauma or MST) and those suffering from service-connected Post-traumatic Stress Disorder (PTSD) or other service-connected or service-aggravated mental health problems.

Let me start by applauding your legislative efforts to insure that Veterans suffering from these various mental health problems receive the mental health treatment they deserve. I assure you that the leadership of the Department of the Navy is committed to assisting our present and former sailors and Marines with fair and open processes to make appropriate corrections to their military service records.

Overview of Department of the Navy Review Boards

The Secretary of the Navy, pursuant to authorities provided in Title 10 of the United States Code, has established the Board

for Correction of Naval Records (BCNR). The Secretary has also established various other review boards under the umbrella of the Council of Review Boards (CORB). The CORB Director oversees the efforts of the Naval Discharge Review Board (NDRB), the Physical Evaluation Board (PEB), the Combat-Related Special Compensation Board (CRSCB), the Naval Complaints Review Board (NCRB), the Naval Clemency and Parole Board (NCPB), the Navy Department's Board of Decorations and Medals (NDBDM), the Disability Review Board (DRB), and the Personnel Security Appeals Board (PSAB).

The Discharge Review Process

The BCNR and the NDRB, established pursuant to 10 U.S.C. §§ 1552 and 1553 respectively, are granted the authority to determine whether a Veteran's discharge was proper and equitable or warrants a change. Under the statutory scheme, the NDRB is the board of first resort for all discharges issued less than 15 years prior to the petition. Petitioners whose discharge was issued more than 15 years before their petition are referred to the BCNR. Additionally, petitioners may seek additional consideration of their petitions at the BCNR when they do not receive the relief they are seeking from the NDRB. Both the NDRB and the BCNR apply the same review standards for discharge upgrades and follow similar procedures for reviewing these petitions. Although it is the petitioner's responsibility in all cases to present all relevant evidence in support of their petitions, the staffs of both Boards go to considerable lengths to assist petitioners, especially in securing military service records and military and VA medical records.

Upon receipt of the Veteran's application, the NDRB will begin its preparation and document collection of the case by confirming the Veteran's eligibility for review; obtaining the Veteran's DD Form 214; assigning a case file number; logging the Veteran's information into a case-management system/database; and preparing a case file for a Document Review before a five-member Review Board. Generally, these steps take approximately 60-90 days. Most of this time is attributable to the time to obtain the Veteran's service and medical records from the United States Marine Corps/Navy automated repository system and medical treatment and clinical records from the Department of Veterans Affairs (DVA).

Following the document collection, the five-member board conducts a Documentary Record Review of the Veteran's military records and any materials provided to determine whether the evidence warrants a change of characterization to Honorable or General (Under Honorable Conditions). The criteria for determining discharge characterization are as follows. An Honorable characterization of service is warranted when the quality of a member's service generally meets the standard of acceptable conduct and performance for naval personnel, or is otherwise so meritorious that any other characterization of service would be clearly inappropriate. A General (Under Honorable Conditions) discharge is warranted when the quality of the member's service has been honest and faithful but significant negative aspects of the member's conduct or performance of duty outweighed the positive aspects of the member's service record. An Under Other Than Honorable Conditions discharge is warranted when a member engages in conduct involving one or more acts or omissions that constitute

a significant departure from the conduct expected of members of the Naval Service.

The Document Review phase averages about 120-150 days. Factors contributing to this part of the processing time include the volume of cases in progress; the volume of the Veteran's service and medical record; preparation of a detailed brief for the review board; the document review hearing; and finalizing a decisional document that conveys the findings and conclusions of the board. All petitions involving a claim of PTSD, Traumatic Brain Injury (TBI), or other mental health disorders receive priority consideration, are reviewed by a psychiatrist or clinical psychologist who also sits on the board, and are subject to liberal consideration.

Following a quality assurance review, the NDRB issues its written findings (Decisional Document) to the Veteran detailing the Board's findings and conclusions as well as any appeal rights. Finally, the NDRB will post a redacted version of the Decisional Document to the DOD Reading Room located at <http://boards.law.af.mil/NAVY DRB.htm>. The BCNR Reading Room is located at <http://boards.law.af.mil/NAVY BCNR.htm>.

The BCNR follows essentially the same administrative process described above with a few additional steps. The BCNR is the highest level of administrative review and only reviews discharge cases that involve discharges that occurred more than 15 years before the petition or those that have exhausted their review with the NDRB. If the BCNR receives an application that is missing substantial documentation to help support their case, BCNR notifies the individual of missing information and gives them 60 days to provide that information.

Additionally, the BCNR triages/prioritizes all cases involving invisible wounds, such as PTSD, MST, or mental health issues and orders an advisory opinion from a licensed psychiatrist. The psychiatrist advises on the issues of whether the medical documentation provided or obtained substantiates that the asserted condition existed at the time of service and, if so, whether there appears to be a nexus between the mental health condition and the misconduct presented in the discharge record. Once the advisory opinion is received, if negative to the member, the member is given 30 days to respond. All information gathered, including the OSD Policy guidance regarding liberal consideration for Veterans, is then presented to a 3-member panel of the BCNR. More specifically, in cases where there is a diagnosis of service-connected PTSD or where the Service records or any document from the period of service substantiate the existence of one or more symptoms of what is now recognized as PTSD or a PTSD-related condition during the time of service, the BCNR applies liberal consideration to finding that PTSD existed at the time of service. In such cases, the BCNR will also consider those conditions as potential mitigating factors in the misconduct that caused the discharge characterization.

The BCNR recently invited a psychiatrist to train the staff and Board members on what types of information to look for when reviewing PTSD or MST cases. The greatest challenge the staff and BCNR have is the lack of documentation provided or documented in the member's application or available records. If the application is denied, the decision memorandum sent to the member explains why the case was denied and gives them examples of the types of information that would be beneficial if they choose to resubmit their petition with new information.

Review Board Processing Statistics:

To provide an overall processing picture for the Department of the Navy's Review Boards, the following statistics are provided:

NDRB:

In Fiscal Year 2016, the NDRB completed 1163 adjudications and found that 151 [13 %] warranted an upgrade. The average processing times for these petitions was approximately nine months. Of those 1163 cases, 122 involved an Under Other Than Honorable Conditions (UOTHC) discharge coupled with a PTSD related claim of which 18 [15%] were upgraded. As of the end of the first quarter for Fiscal Year 2017, the NDRB has completed 457 adjudications and found that 29 [6%] warranted an upgrade. Of those 457 cases, 62 had a UOTHC discharge coupled with a PTSD related claim of which 3 [5%] were upgraded.

BCNR:

In Fiscal Year 2016, the BCNR completed 721 discharge characterization adjudications and found that 66 (9%) warranted an upgrade. The average processing times for these petitions was approximately six months. Of those, 554 (76%) involved an Under Other Than Honorable Conditions (UOTHC) discharge. Of these cases, 31 (6%) resulted in discharge characterization upgrades. Of the 554 UOTHC cases, only 83 (15%) included claims of PTSD of which 8 (9.6%) were granted discharge characterization upgrades. Finally, of the 554 UOTHC cases, only 4 (.072%) included claims of MST and none were granted discharge characterization upgrades. Although the grant rate for PTSD and MST cases receiving a UOTH characterization is slightly higher than other types of discharge cases, the grant

rate will likely continue to rise as the processes BCNR put into place weren't implemented until late 2016, and won't show up in data for a few more months.

Example Cases Showing a Basis for an Upgrade:

To better understand the decision-making process by the Department of the Navy's review boards, I present examples of a few actual cases where a board granted an upgrade and a few where they declined to grant an upgrade. I have omitted any personally identifiable information in order to preserve the Veterans' privacy.

Examples Granting Upgrade

1. A Marine Lance Corporal who deployed in 2004 in support of Operation IRAQI FREEDOM. He was found guilty by Summary Court Martial of using a controlled substance (marijuana) in January 2005, and was subsequently discharged with an Under Other Than Honorable discharge. The petitioner submitted a VA Compensation Letter evidencing PTSD. In this case, the Board relied upon the VA letter and gave liberal consideration that PTSD existed at the time of the drug use, and also gave liberal consideration that the PTSD potentially contributed to the drug use. The Board found that a General (Under Honorable Conditions) discharge was the more appropriate characterization.

2. A Marine Lance Corporal who deployed in 2008 in support of Operation IRAQI FREEDOM. In April 2010, he received non-judicial punishment for driving under the influence, but was retained for future military service. However, following his

use of a controlled substance (marijuana) one month later, he was convicted of that offense by summary court martial and subsequently discharged with an Under Other Than Honorable discharge. The petitioner's pre-discharge medical record included Post Deployment Health Reassessment documentation and cognitive testing with neurology notes and post-service medical documentation of a psychological evaluation including a diagnosis of PTSD. The Board applied liberal consideration of the medical evidence to find that PTSD existed during service and was a factor in the Marine's misconduct. As a result, the Board determined a General (Under Honorable Conditions) discharge was the more appropriate characterization.

3. Male Navy Corpsman deployed to Iraq as a Corpsman in 2006. He had no disciplinary infractions and excellent performance ratings. Upon his return, he was faced with the stress of his father's rapidly deteriorating health, pressure of Hospital Corpsman (HM) School, and stress disorder from Iraq. He started to use alcohol as a coping mechanism and one night when drunk admittedly used cocaine. He received non-judicial punishment (NJP) and went before an Administrative Discharge Board (ADB). Although the ADB voted to separate with an Other Than Honorable (OTH) characterization of service, the commanding officer (CO) believed that Post Traumatic Stress Disorder (PTSD) was the underlying cause of Sailor's issues. The Sailor was screened for PTSD but did not want to be diagnosed in fear of the stigma associated with PTSD and the possible removal from HM school. The CO recommended retention or at the least, a general under honorable conditions characterization of service (GEN). Both Navy Medicine Manpower and Navy Medicine Support Command concurred with the GEN characterization of service. Subsequently, the discharge authority directed an OTH in 2007.

Since his discharge in 2007, he was diagnosed with PTSD by the Department of Veterans Affairs and has a combined 100% disability rating. Navy Bureau of Medicine (BUMED) advisory opinion concurred that the PTSD contributed to misconduct and his request had merit. The Board granted relief and upgraded the discharge to Honorable.

Examples Denying Upgrade

1. A Marine Sergeant who deployed for six months in 2005 and for six months in 2008 in support of Operation IRAQI FREEDOM. In 2010, he was processed for separation as a result of an incident of illegal drug use but the separation was suspended for up to 12 months on the condition that he not engage in further misconduct. However, two months later he received non-judicial punishment for stealing copper gutters valued at approximately \$15,000 from a government building and then selling it to a private salvage facility. As a result, he was subject to an administrative discharge board, where he was represented by counsel. The discharge board found that he committed the offenses and voted 3-0 to separate with an Under Other Than Honorable discharge. In 2015, the Marine petitioned the Board and claimed his theft was a result of his PTSD. The petitioner was unable to present any medical evidence of PTSD or PTSD symptoms and none were evident in the Marine's medical records. In this case, the Board was unable to establish the existence of PTSD and found that the theft was pre-meditated and intentional. Therefore, the Board upheld the decision to characterize the Sergeant's discharge as Under Other Than Honorable Conditions.

2. Decorated Marine Viet Nam combat veteran served between 1968-1971 and received a General discharge for misconduct (all misconduct occurred after returning from Viet Nam). He asserted he was suffering from undiagnosed Post Traumatic Stress Disorder (PTSD) and requested that his discharge be upgraded. He provided no medical diagnosis and the review of his medical and Service records did not reveal any support for his assertion. He received three separate non-judicial punishments (absent from formation, not in proper uniform, disobeying lawful orders, and keeping a loaded weapon in his locker), two convictions by Summary Courts-Martial (sleeping on post, disrespect, disobeying a lawful order, and carrying a loaded weapon), and was ultimately separated with a General (under Honorable conditions) discharge. The Board denied relief as there was nothing to support or substantiate that PTSD existed. The final decision letter notified the petitioner that if he chooses to submit a request for reconsideration, he should include any medical, clinical, or other documentary evidence regarding PTSD triggering events and treatment, or other service related trauma.

3. Marine Viet Nam combat veteran served between 1969-1970 and received a General (under Honorable conditions) discharge for misconduct (all misconduct occurred in theater). He asserted he was suffering from undiagnosed Post Traumatic Stress Disorder (PTSD) and requested that his discharge be upgraded. He provided no medical diagnosis and his Navy records do not reveal anything that would support his assertion. He received 2 non-judicial punishments (violation of a lawful order, willful discharge of a firearm resulting in injury to a Vietnamese national, and unauthorized absence), 1 Summary Court-Martial (violation of a lawful order - possession of prohibited

stimulant and loitering at his post as a sentinel) and was separated with a General (under Honorable conditions) discharge. The Board denied relief as there was nothing to support or substantiate that PTSD existed. The final decision letter notified the petitioner that if he chooses to submit a request for reconsideration, he should include any medical, clinical, or other documentary evidence regarding PTSD triggering events and treatment, or other service related trauma.

Customer Service for our Veterans:

In an effort to expand our outreach to veterans, in FY16 the Department of the Navy developed a primer explaining the Naval Discharge Review Board process that is distributed to various Veterans Service Organizations. Additionally, both the BCNR and NDRB leadership have participated in multiple community outreach briefs in an effort to assist various Veteran Service Organizations advocate on behalf of our nation's veterans. The BCNR in collaboration with the Veterans Affairs hosted a Facebook event reaching out to veterans about discharges and VA benefits. These outreach efforts have been so successful, that the NDRB observed an 1,100 case increase in discharge review applications between Fiscal Year 2015 and Fiscal Year 2016. In the past year (FY16), the BCNR's total number of MST cases received (including those with General Discharge characterizations) have increased by 65% from 48 (FY15) to 72 (FY16) and PTSD cases (including those with General Discharge characterizations) have increased by 300% (from 96 to 475).

The NDRB is also deeply involved with its sister services review boards in developing a revision to the DD Form 293 (Application for Review of Discharge) with the intended goal of

making a "smart form" to assist the Veteran better clarify and support their claim(s). Additionally, both the BCNR and NDRB are working to develop a web-based case-management system that makes it easier for our veterans to submit their discharge upgrade requests, and for the Boards to process and track applications.

The NDRB has also successfully implemented the option of allowing a veteran to conduct their Personal Appearance Hearing telephonically rather than appear locally. The Boards have observed a positive reaction to telephonic hearings as evidenced by the near elimination of veterans who fail to appear at their hearing; a nearly 30 percent increase in requests for Personal Appearance Hearings; and what appears to be reduced anxiety by the veteran when participating in the Hearing.

Summary:

Mr. Chairman, serving in the all-volunteer Armed Forces is challenging, but reflects a commitment to our Nation; thus, our Marines and Sailors deserve to be properly recognized upon completion of their service. One of the ways in which our Marines and Sailors are recognized is through the determination of their characterization of service. As such, the Department of the Navy's Review Boards are committed to processing our veterans' request for a discharge review in a fair and timely manner.

Once again, I appreciate the opportunity to discuss the Department of the Navy's views on ensuring our former Marines and Sailors receive the recognition and benefits they deserve both while in service and upon discharge. This concludes my statement.