

22-5063
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

**In the
Supreme Court of the United States**

Michael A. Tulipat

PETITIONER,
vs.

United States

RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO
United State Court of Appeals for the Federal Circuit

PETITION FOR WRIT OF CERTIORARI

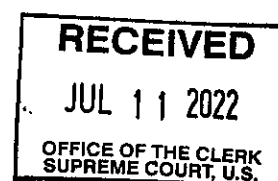
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I. QUESTIONS PRESENTED

- 1) Does Rule 42(b) of the Rules of the Court of Federal Claims, "Failure to Prosecute" overrule the 7th Amendment? Was dismissing my case the only remedy?
- 2) Is our judicial system in place solely for government interest?
- 3) Can the government create a stigma for a young colored man diminishing equal employment opportunity for 20 years without repercussions?
- 4) Does 10 US Code §815-Article 15 goes against our Founding Fathers purpose of the Constitution that did not allow one person to have too much authority or control?
- 5) After the hearing on September 15, 2010, 111th U.S House of Representatives, Committee on Veterans' Affairs. Is it equitable just to relabel the narratives of the 22,600 servicemembers that were improperly discharged with personality disorder for the conveniences of Secretarial of Authority?
- 6) Is the Military Administrative Boards, lower trial courts, and the Department of Justice's function is to legally protect government and white citizens interest only?

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III. Table of authorities cited

Cases

Lipman v. Sec' of Army, 335 F. Supp. 2d 48 (D.D.c.2004)

Michael Tulipat v. Secretary of the Navy, Et al

McKoy v McKoy, 214 N.C. App. 551 (2011)

Page v. Mandel, 154 N.C. App. 94 (2002)

McKoy, 214 N.C. App. 554

Spencer v. Albermarle Hosp., 156 N.C. App. 675 (2003)

Wilder 146 N.C. App. At 578

Foy v. Hunter, 106 N.C. App. 614 (1992)

Greenshields, In. v. Travelers Prop. Cas. Co. of America, 781 S.E.2d 840 (January
2016)

Marbury v. Madison, 5 U.S. (1 Crunch) 137, 163 (1803)

Grayned v. City of Rockford, 408 U.S. 104 (1972)

Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) (per
curiam)

Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir.1994)

IV. OPINIONS BELOW

The opinion of the Department of the Naval Discharge Review Board, dated June 12, 2015, discharge was proper as issued and no change is warranted, is not yet reported, and is attached as Appendix C

The opinion of the Department of the Naval Discharge Review Board, dated January 30, 2018, discharge characterization change to Condition not a Disability, is not yet reported, and is attached as Appendix E

The opinion of the Department of the Board for Correction of Naval Records, dated January 9, 2019, discharge characterization change to Secretarial Authority, is not yet reported, and is attached as Appendix F

The opinion of the United States Court of Appeals for the Ninth Circuit, dated April 16, 2021, dismissed lack of jurisdiction and transferred, is not yet reported, and is attached as Appendix G

The opinion of the United States Court of Federal Claims dated July 7, 2021, dismissed plaintiff failure to prosecute, is not yet reported, and is attached as Appendix H

The opinion of the United States Court of Appeals for Federal Circuit, dated January 13, 2022, Affirmed, is not yet reported, and is attached as Appendix I

V. JURISDICTION

S.Ct. Rule 10(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Further, this "petition for a writ of certiorari to review a judgment on January 13, 2022, entered by the United States Court of Appeals for the Federal Circuit is timely," as it is submitted "within 90 days after entry of the judgment," pursuant to S.Ct. Rule 13.1.

Further, on April 5, 2022, The Chief Justice of the United State Supreme Court extended the time to and including June 12, 2022.

VI. PARTIES TO THE PROCEEDINGS

Michael Andrew Tulipat, the Petitioner, Pro Se, is listed as the Petitioner on the cover page.

Secretary of the Navy, Elizabeth A. Hill, R.C. Powers, Kari Kamphuis, Department of the Navy, Board for Correction of Naval Records, Bradley J. Goode, Karen R. Clemons, Mark T. Newman, Naval Inspector General is the Respondent(s) in this matter.

VII. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

10 U.S.C. § 1552

Fifth Amendment

Fourth Amendment

Seventh Amendment

1946 Administrative Procedure Act (APA)

Military Whistleblower Protection Act

Title 10 U.S.C. § 1034

2002 No FEAR Act.

JAG INSTRUCTION 5800.7F

22 U.S. Code § 2702.

SECNAVUNST 5420.193

NAVPERSCOMINST 5420.1

DoD INSTRUCTION 1332.14

DoD INSTRUCTION 6490.08

DoD DIRECTIVE 6490.1

DoD INSTRUCTION 6490.04

DoD INSTRUCTION 6490.06

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition: DSM-5

The Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)

Ethical Principles of Psychologists and Code of Conduct ("APA Ethics Codes") (APA, 2002a, 2010) and the Record Keeping Guidelines (APA, 2007).

VIII. STATEMENT OF THE CASE

I am humbly asking the court to read my pleadings with care, granting greater latitude than would a litigant represented by professional counsel. *Haines v. Kerner*, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) (per curiam). It is well accepted that a Pro Se Party's supporting papers are read liberally, interpreting them to raise the strongest arguments they suggest. *Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir.1994)

On January 12, 2002, I was accused of intentionally scratching my wrist to avoid training at Marine Corps Mountain Warfare Training Center (MWTC), Bridgeport, California. Per reference Rule of Court-Martial (R.C.M.) 301. Upon receipt of a report, the immediate commander of a suspect should refer to R.C.M. 306 (Initial disposition) before determining an appropriate disposition, a commander should ensure that a preliminary inquiry under R.C.M. 303 has been conducted. Rule of Court-Martial (R.C.M.) 303, the commanding officer (CO) (B.D. Chapman) must conduct some form of inquiry into reported offenses that may be tried by court-martial. According to Judge Advocate General Instruction 5800.7F, Judge Advocate Manual Chapter 2, 0201(b) If the only basis for an investigation is disciplinary action, a preliminary inquiry under Rule for Courts-Martial (R.C.M.) 303, Manual for Courts-Martial (MCM), or a pretrial investigation under R.C.M.

405, MCM, and Article 32 Uniform Code of Military Justice, should be conducted without a separate investigation under this Manual. However, there are no reports of an investigation, preliminary inquiry, physical evidence, observational evidence, circumstantial evidence, or witness statements that supports probable cause or that lead up to the discovery of Private First-Class Michael A. Tulipat violating Article 115 of the Uniform Code of Military Justice (UCMJ) of malingering. Manual for Court-Martial, Part V, Page V-2 (4.)(a)(3) a brief summary of the information upon which the allegations are based or a statement that the member may, upon request, examine available statements and evidence. Which the command and the Board of Correction of Naval Records (BCNR) cannot provide but basis their judgment on limited fictitious anecdotal evidence.

On February 7, 2002, the Division Psychiatrist recommended my separation, diagnosing me with personality disorder, not otherwise specified with immature features. Dr. R. D Puder stated, "In the examiner's opinion, the patient does not possess a severe mental disease or defect for the purpose of R.C.M (Rules of Court Martial) 706 examination and is considered competent." According to the Manual of Court Martial Rule 706. (c)(2) Matters in inquiry. When a mental examination is ordered under this rule, the order shall contain the reasons for doubting the mental capacity or mental responsibility, or both, of the accused, or other reason for requesting the examination. In addition to the requirements, the order shall require

the board to make separate and distinct findings as to each of the following questions:

- a. At the time of the alleged criminal conduct did the accused have a severe mental disease or defect?
- b. What is the clinical psychiatric diagnosis? Personality disorder according to Dr. R. D Puder.
- c. Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his or her conduct?
- d. Is the accused presently suffering from a mental disease or defect rendering the accuse unable to understand the nature of the proceedings against the accused or to conduct or cooperate intelligently in the defense?

On January 12, 2002, I allegedly scratched myself and Commanding Officer B.D. Chapman abstain from conducting a preliminary inquiry under R.C.M. 303 or an administrative and criminal investigation. Commanding Officer B.D. Chapman had no facts to order an inquiry which shows his misconduct. Ordering a mental health evaluation with no supporting evidence is a clear indication of reprisal. According to Department of Defense Instruction 6490.04 (3)I, No one may refer a Service member for an MHE (Mental Health Evaluation) as a reprisal for making or preparing a lawful communication of the type described in section 1034 of reference (d) and in Department of Defense (DoD) Directive 7050.06 (Reference (j)) (Military

Whistleblower Protection 1988). Department of Defense Instruction 6490.04, Enclosure 3 (4)(d)(4) Medical Record Documentation. Documentation of the evaluation encounter, findings, and disposition must be consistent with applicable standards of care and will additionally: (a) Document information pertaining to the inpatient admission in the Service member's Medical Treatment Facility electronic health record including at a minimum communication of the assessment of risk for dangerousness, treatment plan, medications, progress of treatment, discharge assessment, and recommendations to commanders or supervisors regarding continued fitness for duty and actions the Mental Health Physician (MHP) recommends be taken to assist with the continued treatment plan. (b) Upon discharge, MHPs will provide, with Reference (k) (Department of Defense (DoD) Instruction 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members, " August 17, 2011), memorandums or copies of consultation reports to the commander or supervisor with sufficient clinical information and recommendations to allow the commander or supervisor to understand the Service member's condition and make reasoned decisions about the Service member's safety, duties, and medical care requirements. Department of Defense (DoD) Instruction 6490.04, Enclosure 3 (5)(b) The providers will advise the commander or supervisor of any duty limitations or recommendations for monitoring or additional evaluation, recommendations for treatment, referral of the Service member to a Medical Evaluation Board for processing through the Disability Evaluation System in accordance with DoD

Instruction 1332.18 (Reference (m)), or administrative separation of the Service member for personality disorder or unsuitability for continued military service under DoD Instruction 1332.14 (Reference (n)). Any referral for consideration of potential separation from Military Service will be in accordance with Military Department procedures. Department of Defense Instruction 1332.14 (3)(d)(1) Reasonable efforts should be made by the chain of command to identify enlisted Service members who exhibit the likelihood for early separation and improve their chances for retentions through counseling, retraining, and rehabilitation. Which nothing was offered nor documented in my situation.

In just 4 months the command accused, ostracized, labeled, and administratively discharged me. DoD Instruction 1332.14, Enclosure 3 (8)I 1. A diagnosis by an authorized mental health provider as defined in DoD Instruction 6490.04 (Reference (j)) utilizing the Diagnostic and Statistical Manual of Mental Disorders (Reference (k)) and, in accordance with procedures established by the Military Department concerned, concludes the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired.

A. The onset of personality disorder is frequently manifested in the early adult years and may reflect an inability to adapt to military environment as opposed to an inability to perform the requirements of specific jobs or tasks or both. I have provided statements from family members, other Marine's statements in boot camp, pictures when I was a police cadet while in high school, and high school graduation

pictures, graduation from boot camp, and School of infantry with no negative statements or administrative disciplines.

b. Observed behavior of specific deficiencies should be documented in appropriate counseling or personnel records. Documentation will include history from supervisors, peers, and others, as necessary to establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the enlisted Service member was counseled and afforded an opportunity to overcome the deficiencies. The Board for Correction of Naval Records (BCNR) will continuously say I was offered counseling and me waiving my rights but cannot provide the documentation that supports their narrative.

(f) Prior to involuntary separation under this provision, the notification procedure in section 2 of Enclosure 5 will be used. Documentation must include evidence that the Service member is unable to function effectively because of a personality disorder, or other mental disorder not constituting a physical disability.

The only evidence the Board for Correction of Naval Records (BCNR) uses is the botched documented Commanding Officer B.D, Chapman's nonjudicial punishments which has no supporting evidence and Dr. R. D, Puder's fictitious diagnosis.

September 15, 2010, Serial No. 111-97, The U.S. House of Representatives Committee on Veterans Affairs held a hearing. Joshua Kors an investigative reporter stated, "Recruits who have a severe preexisting illness like personality disorder, do not pass the rigorous screening process and are not accepted into the Army." Dr. Thomas J. Berger, PhD stated, "In other words according to the

diagnostic and statistical Manual of Mental Disorder (DSM)-IV, to be diagnosed with a disorder in the category, the symptoms have been present for an extended period of time, inflexible and pervasive, and are not the result of alcohol or drugs or another psychiatric disorder, and that history of symptoms can be traced back to childhood or adolescence. Contradicting Dr. R. D. Puder's diagnosis, according to American Psychiatric Association there are many assessments Dr. R. D. Puder could have utilized and documented during his 15-minute assessment. There is Shedler-Westen Assessment Procedure (SWAP-200), Level 1 Cross-Cutting Symptom Measures, Level 2 Cross-Cutting Symptom Measures, Disorder-Specific Severity Measures, Disability Measures Personality Inventories, Early development and Home Background, Cultural Formulation Interviews, Family, Peer, and Supervisor statements. According to the Manual of Mental Disorder (DSM)-5 a diagnosis of personality disorder requires two determinations: 1. An assessment of the level of impairment in personality functioning, which is needed for Criterion A, and 2) an evaluation of pathological personality traits, which required for Criterion B. Which none of these two specific assessments were conducted nor documented. In 2017, I submitted a psychological evaluation performed on November 4th, 2016, by licensed psychologist Megan Callahan, PsyD, she utilized the Minnesota Multiphasic Personality Inventory 2 (MMPI-2) and a clinical interview based on the MMPI-2 results and concluded that I did not exhibit any symptoms of personality disorder, she speculated that my in-service evaluation diagnosis is inaccurate, and found no diagnosis. July 9, 2018, an Advisory opinion by Licensed Clinical

Psychologist S. Hake, PhD from BCNR stated, "3. Bases on the preponderance of evidence, it is my considered medical opinion that the Petitioner (Michael A. Tulipat) could have been misdiagnosed with a personality disorder as evidenced by his post-service psychological evaluation." S. Hake, PhD violated NAVPERSCOM INSTRUCTION 5420.1 (2) Writing Advisory Opinion, Advisory opinions and recommendations shall comport with law, policy, and the evidence in the petitioner's record and application for relief. (a) The action officer should explicitly reference all policies, regulations, and other guidance relevant to the issues addressed in the written document. I review and research of the allegations, arguments, defenses, and supporting evidence should be unbiased. By S. Hake, PhD stating, "Could have been misdiagnosed." Makes his/her statement bias because I sent in showing zero negative comments or actions while in basic training, school of infantry, no criminal history, volunteer at a local sheriff office, high school athlete, legally bearing a firearm in public, self-initiated psychological evaluation by a licensed psychologist, other evidence premilitary, and currently a peace officer. Doctor S. Hake PhD's statement should have stated, "Mr. Tulipat's supporting evidence and Pro Se activates show clear indication he was absolutely misdiagnosed."

On February 22, 2002, I received a nonjudicial punishment (NJP) for violating Article 115 of the Uniform Code of Military Conduct (UCMJ): In that Private First Class/ E2 (PFC) Tulipat, did at Mountain Warfare Training Center

(MWTC), Bridgeport, CA, on or about 1700 (5:00 PM), 020112 (January 12, 2002), for the purpose of avoiding training exercise, intentionally injure himself by scratching his wrist with a knife. During the initial hearing Commanding Officer B.D. Chapman asked me, "How does an excellent Marine like you go through Basic Training, School of infantry with no issues, and do something like this?" I replied, "With all due respect sir, you are running a circus full of clowns, drug addicts, bullies, and all bullshit." CO B.D. Chapman felt ridiculed and embarrassed that a colored subordinate spoke up. He replied in an upset tone setting the final deposition: forfeiture of \$552 pay per month for 2 months (total forfeiture of \$1,104), reduction to Private/E1, restriction to the limits of place of mess, billeting, duty, and worship and the most direct route to and from duty for 45 days and 45 days extra duties to run concurrently. 020222 (February 22, 2002). After he said, "Get this piece of shit out of my office." CO B.D. Chapman had several options for correction or disciplinary actions. According to the Manual of the Judge Advocate General.0102(b)Types of administrative measures. 0103 Extra military instruction, 0104 Administrative withholding of privileges, 0105, and Nonpunitive Censure before imposing nonjudicial punishment. USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN) June 2020, Page 2. Mandatory Referral to Navy Criminal Investigation Services: Reference (c) mandates that certain incidents be referred to NCIS, whether occurring on or off- base, and regardless of civilian investigation involvement. These incidents include Actual, suspected, or alleged major criminal offenses punishable under the Uniform Code of Military Justice

(UCMJ) by more than 1 year of confinement. Judge Advocate General Instruction 5800.7F, Judge Advocate Manual Chapter 2, 0201(b) and (c) Relation to other investigations. Article 115 of the Uniform Code of Military Justice- Malingering, Self-inflicted injury in any case, death penalty will not be awarded in such a trial, and the accused shall be given no more than 10 years of confinement as maximum punishment. Which requires Commanding Officer B. D. Chapman to report to NCIS but choose not to. If Commanding Officer B.D. Chapman was following procedures, statutes, and rules. He would have remained cognizant of "Operation Xterminator" in his command and acknowledging my comments and reasoning behind the allegations made against me. Unless Commanding Officer B.D. Chapman, other officers, and senior marines were aiding and abetting some of the Marine's involved in the criminal acts violating Article 77 of the UCMJ (Aiding and Abetting) and Article 134 UCMJ (Fraternization).

On March 27, 2002, I received a second non-judicial punishment by Commanding Officer (CO) B.D. Chapman for violating Article 92 and Article 134 of the Uniform Code of Military Conduct (UCMJ): In that, PVT (Private/E1) Tulipat, did at 1st Battalion, 8th Marines, 2nd Marine Division, CLNC (Camp Lejeune, North Carolina), on or about 2300 (11:00 PM), 020318 (March 18, 2002), Violating lawful regulation, by drinking while under age of 21, and breaking restriction by leaving the restriction limits. The final deposition of forfeiture of \$552 pay per month for 2 months (total forfeiture of \$1,104); restriction to the limits of place of

mess, billeting, duty, and worship and the most direct route to and from duty for 45 days and 45 days extra duties to run concurrently. 28 Mar 02 (March 28, 2002).

Again, Commanding Officer B.D. Chapman's disobedience, failure to cooperate with policies, and procedures will prevail. After my disclosure and statements to CO B.D. Chapman. He will set vengeance to see I am removed from the Marines and prohibited from joining the armed forces. Violating Article 138 UCMJ (Beyond the legitimate authority of that commander. Arbitrary, capricious, or an abuse of discretion). Again, not following the process of Manual for Court Martial (MCM), Judge Advocate Manual, and QUICKMAN legal guide. Rule of Court-Martial (R.C.M.) 301, R.C.M. 306 (Initial disposition), preliminary inquiry under R.C.M. 303, Judge Advocate General Instruction 5800.7F, Judge Advocate Manual Chapter 2, 0201(b), a pretrial investigation under R.C.M. 405, and Article 32 UCMJ. There are no reports of an investigation, preliminary inquiry, physical evidence, observational evidence, circumstantial evidence, or witness statements that supports probable cause or that lead up to the discovery of now Private/ E1 Michael A. Tulipat violating Article 92 and 134 of the Uniform Code of Military Justice (UCMJ). According to USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN) June 2020, Page 2. Mandatory Referral to Navy Criminal Investigation Services, and 5800.7F, Judge Advocate Manual Chapter 2, 0201, CO B.D. Chapman is required to report this nonjudicial punishment to the Navy Criminal Investigation Services. A violation of Article 92 of UCMJ carries a maximum punishment of 2 years confinement and a violation of Article 134 carries

a maximum punishment of Dishonorable Discharge and confinement of 1 year. There is inadequate evidence, no statements to the discovery of my alleged violations. When multiple assessments could have been conducted such as a urinalysis (Ethyl Glucuronide ETG) Alcohol test, or Breathalyzer, pictures, and police reports that collaborates with my violations of drinking underage and breaking restriction. Commanding Officer B.D. Chapman stated I was drinking at 1stBn (1st Battalion), 8thMar (8th Marines), 2d MarDiv (2nd Marine Division), CLNC (Camp Lejeune, North Carolina), which if the allegations were true. I would have been with in my restricted limits, mess, billeting, and worship imposed by him on February 22, 2002, for violating Article 115 malingering.

I was administratively discharged on May 20, 2002, with Character of Service General (Under Honorable Conditions) by reason of the convenience to the government due to personality disorder (Type of Separation: Personality Disorder).

According to MILPERSMAN 1910-122. Ch.28, and page 3. Procedures for requesting a Mental Health Evaluation, requires a referral for a formal mental health evaluation. However, I was not given a referral for a Mental Health Evaluation (MHE) by Commanding Officer B.D. Chapman. I was obeying a direct order by him to have two short visits with Dr. R. D. Puder. The evidence of the informal counseling consists of character statements made on February 21, 2002, when Commanding Officer B.D. Chapman recommended for my separation. Comments by Staff Sergeant Wolken (Platoon Sergeant) and Corporal Brown (Squad leader). Which are the two individuals I have been whistleblowing to about

fellow Marines using drugs, bullying, and hazing subordinate Marines. They stated, "Said Named Marine (SNM) has been afforded numerous opportunities through informal counseling to change his destructive behavior." February 7, 2002, I was diagnosed by Dr. R.D. Puder and on February 21, 2002, Commanding Officer B.D. Chapman's request for my separation and the statements were made by Staff Sergeant Wolken (Platoon Sergeant) and Corporal Brown (Squad leader), "I was given numerous undocumented opportunities, which adds to 14 days to better myself and correct my behaviors of whistleblowing and trying to make legal communication to the Inspector General." Commanding Officer B.D. Chapman arranged for my separation from the Marines 1 day before imposing the NJP on February 22, 2002. Which I was not given the opportunity by a command that swiftly discharged me illegally instead of transferring me to another unit.

Twelve years later in 2014, I discovered errors and injustice through records I obtained from the National Archives and Records Administration. I then applied with the Naval Discharge Review Board (NDRB) with DD form 293. While sending evidence of pre-military and post-military demonstrating excellent characteristics, statements from family members acknowledging I had no mental defects before and after military service, Oregon State Police Records showing no criminal history, and photos as a police cadet while in high school. Demonstrating my commitment to community services, academic achievements graduating high school on time

On June 12, 2015, the Naval Discharge Review Board denied my request to upgrade the character of my discharge and remove two nonjudicial punishments. Stating my non-judicial punishments and discharge was proper and my relief was denied. I must submit new evidence not previously submitted. Depriving and restricting culpable evidence that was sent with my initial application. Neglecting my evidence and rejecting my logical statements.

I applied to Board of Correction of Naval Records (BCNR) and on July 31, 2015, I received Docket Number NR642-15 from the Board of Correction of Naval Records (BCNR). BCNR rejected my application on December 14, 2016, administratively closing my case under SECNAVIST 3420.193 (Secretary of the Navy Instruction 3420.193), Section 3(c)(4): The applicant failed to exhaust all available administrative remedies.

I then reapplied with NDRB and on December 19, 2016, B. A. Towns from the Naval Discharge Review Board (NDRB) sent a letter of acceptance of my application, personal appearance, and assigning Docket Number MD1700142. My application included letters from Congressman Kurt Schrader, Senator Ron Wydan, and a self-initiated psychological evaluation from a licensed Veteran Affairs Psychologist. On January 30, 2018, the NDRB granted partial relief, changing the narrative reason to condition not a disability with corresponding separation code of HFV1 (Unqualified for Active Duty), and the reentry code remain RE-3P (Physical disability (includes discharge and transfer to TDRL (Temporary Disability Retired List) making me disqualified to reenlist to any branch of the military.

Without my acknowledgment, on January 9, 2019, the Board for Correction of Naval Records (BCNR) Docket No: 5111-17 sent a letter stating changes to my record and partial relief was granted. Narrative reason for separation "Personality Disorder" be changed to "Secretarial Authority" in order to remove the stigma "Personality Disorder." However, the "General under honorable conditions" Characterization of service and the "RE-4" Reenlistment Code remain unchanged due to his actions while in the Marine Corps. Anything that is done in my record without my knowledge prior to the change is a violation of 18 US Code § 1341. The Board for Correction of Naval Records are writing any narrative they want without permission and creating more errors of entanglements to my record. I requested this information from BCNR's Executive Director Elizabeth Hill in April 17, 2020 and to no resolution, Violates SENAV Instruction 5420.193, Brady Rule, and Rules of discovery. Upon the petitioner's request for information. I should be given the information I have requested. I than requested it from Freedom of Information Act (FOIA) in June of 2020 and received it, July 1, 2020. According to the records a board member that voted against the change is Mr. Chapman. Mr. Chapman disagrees with the majority and concludes that Petitioner's request does not warrant favorable action. How is Commanding Officer B.D. Chapman allowed to participate in this secret hearing and I was not invited or had any knowledge. This violates SENAV Instruction 5420.193 and corrupt.

On January 9, 2019, the Board for Correction of Naval Records (BCNR) Docket No: 5111-17 sent a letter stating changes to my record and partial relief was granted. Narrative reason for separation "Personality Disorder" be changed to "Secretarial Authority," in order to remove the stigma "Personality Disorder." However, the "General under honorable conditions" Characterization of service and the "RE-4" Reenlistment Code remain unchanged due to his actions while in the Marine Corps.

On May 20, 2019, I filed another request with BCNR. Submitting my recent discoveries and claiming that my two nonjudicial punishments and administrative separation was unjust. Sending evidence as a volunteer for a local Sheriff's office, Conceal Carry license showing my high sense of responsibility and commitment to public safety and service. In April 2020, Executive Director Elizabeth A. Hill wrote a letter expressing that according to Board procedures that conform to Lipsman v. Sec'y of Army, 335 F. Supp. 2d 48 (D.D.C.2004). On January 13, 2020, a three-member panel of the board reviewed my case Docket Number NR5239-19. The board carefully weighed all potential mitigating factors, such as my desire to upgrade my reentry code and remove both of my nonjudicial punishments (NJPs). They considered my argument that the NJPs lacked sufficient evidence and that I was discharged unjustly. The board acknowledged that I was properly diagnosed by the division psychiatrist for harming myself and recommended for administrative separation. In addition, they noted that my misconduct after the diagnosis resulted in two NJPs and warranted a General Discharge. The board found the command

properly notified me of pending administrative separation. Which I waived counsel, and administrative hearing, and the right to make a statement to the separation authority. By doing so I gave up my first, and best, opportunity to advocate for retention or a more favorable characterization of service. The board noted although I was diagnosed with personality disorder, the mental health professional who evaluated me found that I was responsible for my actions. It is regretted that the circumstances of my case are such that favorable action cannot be taken.

On January 13, 2020, a three-member panel of the board reviewed my case Docket Number NR5239-19. The board carefully weighed all potential mitigating factors, such as my desire to upgrade my reentry code and remove both of my nonjudicial punishments (NJPs). They considered my argument that the NJPs lacked sufficient evidence and that I was discharged unjustly. The board acknowledged that I was properly diagnosed by the division psychiatrist for harming myself and recommended for administrative separation. In addition, they noted that my misconduct after the diagnosis resulted in two NJPs and warranted a General Discharge. SECNAV INSTRUCTION 5420.193, Enclosure 1, Section 7 (b) Military Whistleblower Protection Act. The Secretary will ensure that decisions in cases involving the Military Whistleblower Protection Act are issued within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense. Which was more than 180 days of my application and answered by BCNR Executive Director Elizabeth A. Hill not the Secretary of Defense.

On April 17, 2020, I replied to Executive Director Elizabeth A. Hill through email and Carbon Coping the Inspector General of the Navy and other constituents trying to expose the board's corruption. Requesting all Board member's names, regulations, policy, directives, and statutes that were used to determine my case. On April 22, 2020, Kari Kamphuis Human Resource Specialist Records Sections said, "There was no current application. If wanting your previous BCNR decision (Docket # NR5239-19) reconsidered, you must submit a new DD form 149 along with new evidence, not previously submitted to the Board. Exhausting all evidence and time that is available to me.

On May 21, 2020, Michael Tulipat v. Secretary of the Navy, et al was filed with the United States Court of Appeals for the Ninth Circuit. On September 23, 2020, Respondents' motion to dismiss petition for review or in the alternative, for an extension of time to fil brief and respond to pending motions. On April 16, 2021, Respondents' motion to dismiss this petition for review for lack of jurisdiction was granted the court of appeals does not have original jurisdiction to review a decision of the Board for Correction of Naval Records. See 10 U.S.C. § 1552. The Clerk transferred my petition for review and all pending motions to the United States Court of Federal Claims for whatever consideration that court deems appropriate. See 28 U.S.C. § 1631.

On April 4, 2021, The United States of Federal Claims sent instructions for transfers from other courts Rules of the United States Court of Federal Claims (RCFC) 31. On July 27, 2021, an order of dismissal from The United States Court of

Federal Claims was given. Rule 41 of the Rules of the Court of Federal Claims provides that if the plaintiff fails to prosecute or to comply with a court order, the court may dismiss on its own motion.

On August 30, 2021, a notice of docketing was issued with the United States Court of Appeals for the Federal Circuit. On November 30, 2021, the United States Court of Appeals accepted my brief. In my brief I stated, "I understand that I made a mistake due to hardships and circumstances not filing in time but there could have been other remedies, warnings, conditional dismissal, before dismissing my case. McKoy v. Mckoy, 214 N.C. App. 551 (2011) (citations omitted)." I was going through a stressful process while in Police Academy and it was difficult for me to file on time or request for an extension. I stated in my brief that the trial judge swiftly dismissed my case. Knowing that I am limited as a Pro Se. The dismissal is very serious, and courts have classified this type of dismissal as "the harshest of remedies" not to be "imposed lightly." Page v. Mandel, 154 N.C. App. 94 (2002). In cases where the record did not show a consideration of lesser sanctions, the Court of Appeals has consistently reversed and remanded. See McKoy, 214 N.C. App. At 554; Spencer v. Albemarle Hosp., 156 N. C. App.675 (2003), Wilder 146 N.C. App. At 578; Foy v. Hunter, 106 N.C. App. 614 (1992). The record should support intentional delay or some kind of plan that I obstructed the case's advancement. Greenshields, Inc. v. Travelers Prop. Cas. Co. of America, 781 S.E.2d 840 (January 2016).

On January 13, 2022, The United States Court of Appeals for the Federal Circuit affirmed. They have considered Mr. Tulipat's remaining argument but find them unpersuasive.

IX. STANDING

A. Actual Injury

I lost opportunities to serve in other branches of the military. I lost pay, benefits, and retirement. I had a stigma that prohibited me from getting into law enforcement earlier in my life. Now being in law enforcement at the age of 38 years old, it will be more difficult as my physical body will decline. Higher possibilities at an older age to get physically hurt and or permanently out of a career. A career I should have gain at a younger age without the stigma from the military.

Asking for help from Administrative Boards, and District Courts only trying to conceal and dismiss my case.

B. Traceability

The Petitioner, proceeding pro se, asked the Department of the Naval Discharge Review Board, Department of the Board of Correction of Naval Records, United States Court of Appeals for the Ninth Circuit, United States Court of Federal Claims and The United States Court of Appeals for Federal Circuit for relief show facts of violations of my rights. All showing to ignore facts or use rules to ignore my claims.

C. Redressability

The Petitioner respectfully presents a favorable ruling, declaring that my discharge from the military and all non-judicial punishments were unconstitutional.

Reasons for granting the petition

The improper discharge and stigmatism the Marines placed on me caused decades of employment hardship, indefinitely making me ineligible to reenter all branches of the United States military, and always being questioned of my psychological condition reducing my Equal Employment Opportunity.

How many more women and men will our government and American employers ruin citizens lives because they arbitrarily discharged them? United States v. Daniels, 60 MJ 69 (the Fourth Amendment by its express terms protects individuals against unreasonable searches and seizures; under the Military Rules of Evidence, which implement the Fourth Amendment, evidence illegally seized by government agents from a protected is admissible. All non-judicial punishment and my discharge was in violation of my Fifth Amendment right. Depriving me from life, liberty and property.

Conclusion

"The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the

laws furnish no remedy for the violation of a vested legal right." *Marbury v. Madison*,

5 U.S. (1 Cranch) 137, 163 (1803)

"The law must provide explicit standards for those who apply them, or it will amount to an impermissible delegation of basic policy matters by the legislative branch to policemen, judges, and juries for resolution on an ad hoc and subjective basis."

Grayned v. City of Rockford, 408 U.S. 104 (1972).

For the reasons explained above, the Court should grant the petition.

Respectfully submitted,



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