



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

█  
Docket No: 1770-20  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
USN, XXX-XX █

Ref: (a) 10 U.S.C. § 1552  
(b) COMNAVCRUITCOMINST 5370.1G  
(c) MILPERSMAN 1910-133, Failure to Complete Change of Rating (Conversion) Process, Ch. 43, 31 May 2013  
(d) MILPERSMAN 1910-156, Separation by Reason of Unsatisfactory Performance, Ch. 43, 31 May 2013  
(e) MILPERSMAN 1440-010, Change in Rating, Authorization, Ch. 12, 22 September 2005  
(f) DODI 1332.14, Enlisted Administrative Separations, 27 January 2014  
(g) MILPERSMAN 1910-600, Forwarding Cases to the Separation Authority (SA), Ch. 28, 2 September 2009  
(h) MILPERSMAN 1440-011, Forced Conversion, Ch. 70, 13 January 2020  
(i) MILPERSMAN 1910-210, Processing for all Reasons, Ch. 23, 28 May 2008  
(j) MILPERSMAN 1910-700, Separation Authority, Ch. 11, 8 June 2005  
(k) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments  
(2) U.S. Court of Federal Claims, Civil Action No. █ Order, 11 February 2020  
(3) U.S. Court of Federal Claims, Civil Action No. █ Complaint, 13 December 2019  
(4) Preliminary Inquiry, 10 July 2015  
(5) Chief Petty Officer Professional Review Board, 21 August 2015  
(6) Captain's Mast Script, NJP, 27 August 2015  
(7) Report and Disposition of Offense(s) NAVPERS 1626/7, 17 August 2015  
(8) Acknowledgement of Forced Conversion package, 10 November 2015  
(9) NRD █ CO/Force Conversion package, 22 December 2015  
(10) Commander, Navy Personnel Command, Message, Force Conversion Disapproval DTG 261755ZMAY16  
(11) ADSEP Processing Notice, 2 June 2016  
(12) ADB Findings/Recommendations Sheet  
(13) NRD █ CO Memo, Ser N00/0297, 12 August 2016

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- (14) Commander, Navy Recruiting Region [REDACTED] Memo, Ser 00/152, 15 August 2016
- (15) Commander, Navy Recruiting Command Memo, Ser 00/317, 7 September 16
- (16) Commander, Navy Personnel Command PERS-00/748 dtd 1 Dec 16
- (17) DD Form 214, Certificate of Release or Discharge from Active Duty
- (18) Evaluation Report and Counseling Record for 14SEP16 to 15SEP15
- (19) Evaluation Report and Counseling Record for 15SEP16 to 16SEP15
- (20) Navy Personnel Command/PERS-00J Advisory Opinion (AO), 4 August 2020
- (21) Petitioner's Rebuttal to NPC AO, 16 September 2020

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the U.S. Navy with almost 18 years of active service, filed enclosure (1) with the Board for Correction of Naval Records (BCNR) on 13 March 2020, requesting the following relief:

a. Change Petitioner's naval service records to indicate that he was not discharged on 13 January 2017, but rather continued to serve on active duty, without interruption, following the recommendation of an administrative discharge board (ADB) that he be retained.

b. Change Petitioner's naval service records to indicate that he was honorably retired with 20 years of service, rather than involuntarily separated for misconduct with a general (under honorable conditions) characterization of service on 13 January 2017.

c. Change Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) to indicate his characterization of service as honorable, his separation code as "other," and his reentry code as "other."

d. Grant monetary compensation and back pay to the fullest extent permitted by the law for the wrongful discharge.

In very general terms, the basis for this request was that Petitioner's commanding officer (CO) exaggerated the facts and circumstances of Petitioner's misconduct to the separation authority without providing Petitioner the opportunity to rebut the assertions, and that the recommendation of the ADB to retain Petitioner in the Navy was ignored.

2. Enclosure (1) was filed subsequent to a remand of Petitioner's case to the Board by the U.S. Court of Federal Claims (CoFC). See enclosure (2). Petitioner's complaint with the CoFC (Enclosure (3)) is currently stayed, pending resolution of Petitioner's application to the Board.

3. The Board reviewed Petitioner's allegations of error and injustice pursuant to its regulations on 19 October 2020, and provided the recommendations indicated below. The three Board members made separate findings and recommendations. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval service records, and applicable statutes, regulations, and policies.

4. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:



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a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner enlisted in the Navy and began a period of active duty on 13 May 1999. He reenlisted on 12 October 2006 and 2 February 2011. On 21 May 2014, Petitioner reenlisted for a fourth enlistment period of five years. In late 2014, he was assigned to the United States Navy Recruiting District (NRD), [REDACTED]

c. By memorandum dated 30 June 2015, a preliminary inquiry officer (PIO) was appointed to investigate allegations of misconduct against the Petitioner regarding an inappropriate relationship between him and the mother of a Future Sailor (FS). By memorandum dated 10 July 2015, the PIO concluded that Petitioner engaged in an inappropriate relationship as defined by reference (b) with FS's mother. This conclusion was based upon statements and Facebook messages reviewed by the PIO. The PIO recommended Petitioner receive non-judicial punishment (NJP). See enclosure (4).

d. On 21 August 2015, Petitioner appeared before a Chief Petty Officer (CPO) Professional Review Board (PRB). Upon reviewing the PIO report, the PRB referred the case to NJP for a violation of Article 92, Uniform Code of Military Justice (UCMJ). The PRB noted that Petitioner admitted to violating the fraternization policy by engaging in his relationship with the FS's mother. See enclosure (5).

e. On 27 August 2015, Petitioner received NJP for failure to obey a lawful order (i.e., the prohibition in reference (b) against forming personal relationships with the family members of recruits) in violation of Article 92, UCMJ, and making a false official statement (i.e., that he falsely stated that did not meet with FS's mother outside of normal recruiting practices) in violation of Article 107, UCMJ. He pled guilty to both charges. His punishment included an admonition and forfeiture of pay. The record does not specify, however, whether Petitioner's admonition was to be oral or in writing. See enclosure (6). Enclosure (7) reflects that the commander initially indicated that Petitioner received a written reprimand, but this was corrected to indicate that Petitioner received an admonition.

f. By memorandum dated 10 November 2015, Petitioner acknowledged that NRD San Antonio was submitting a forced conversion package due to a lack of confidence in Petitioner's ability to remain in the Navy Career Counselor rating. He agreed in this memorandum not to oppose conversion and to apply for one of the ratings to be offered. He also acknowledged that he could be subject to administrative processing if the rating conversion was unsuccessful. See enclosure (8). The NRD [REDACTED] commanding officer (CO) submitted the forced conversion request by memorandum dated 22 December 2015, commenting that Petitioner "may still be a viable asset to the Navy in another rate." See enclosure (9).

g. Reference (c) provides that "Forced conversions must not be used in lieu of disciplinary... procedures, or to relieve the command of a substandard performer. Only submit forced conversion requests for Sailors who are recommended for retention, have potential for future Navy service, are capable and qualified to serve in requested ratings, and are not subject to administrative separation (ADSEP) proceedings."



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h. By message dated 26 May 2016, the Commander, Navy Personnel Command (NPC), disapproved the forced conversion request because the "needs of the Navy do not support conversion." The message directed Petitioner's immediate administrative separation processing in accordance with references (c) and (d) due to failure to complete change of rating (conversion) processing. See enclosure (10).

i. On or about 2 June 2016, Petitioner was notified that he was pending ADSEP processing for unsatisfactory performance as evidenced by his failure to complete change of rating (conversion) processing; and for misconduct (i.e., commission of a serious offense), as evidenced by his violations of Article 92 and 107, UCMJ. See enclosure (11). By signature dated 8 June 2016, Petitioner elected to exercise his rights to an ADB and to "obtain copies of documents that will be forwarded to the separation authority supporting the basis for the proposed separation." See enclosure (11).

j. On 3 August 2016, the ADB unanimously found that the evidence did not support the allegation of unsatisfactory performance by failure to complete conversion processing, but that it did support the allegations of misconduct for commission of serious offense due to Petitioner's violation of Articles 92 and 107, UCMJ. By a vote of 2 to 1, however, the ADB recommended that Petitioner be retained in the Navy. See enclosure (12).

k. By memorandum dated 12 August 2016 and in accordance with reference (j), Petitioner's CO recommended that he be separated from the Navy despite the ADB's recommendation. Specifically, the CO disagreed with the ADB's finding of no basis to separate Petitioner for failure to complete conversion processing. Citing to reference (d), the CO asserted that the ADB ignored the overwhelming evidence that Petitioner did, in fact, fail to complete conversion processing. The CO also asserted that Petitioner should be separated despite the ADB recommendation because he has no potential for future service given that he had no function to perform at NRD [REDACTED] because he abused his authority as a senior recruiter and as a Chief Petty Officer by pursuing a sexual relationship with FS's mother; and because he lied during the preliminary investigation and during the ABD. The record of proceedings of Petitioner's ADB was attached to this recommendation. See enclosure (13).

l. By memorandum dated 15 August 2016, the Commander, Navy Recruiting Region [REDACTED] concurred with the recommendation of the NRD [REDACTED] CO. See enclosure (14). By memorandum dated 7 September 2016, the Commander, Navy Recruiting Command, also concurred with the recommendation. See enclosure (15).

m. By memorandum dated 1 December 2016, the Commander, NPC, forwarded enclosure (13) to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)), with the recommendation that Petitioner be separated for misconduct with a general (under honorable conditions) characterization of service. This memorandum repeated the assertions made in enclosure (13) that Petitioner wrongfully inserted himself into the recruitment of FS to pursue a sexual relationship with his mother, and that Petitioner retaliated against FS when asserted that Petitioner had been reprimanded for his misconduct pursuant to the aforementioned



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NJP. It also asserted, erroneously, that Petitioner was reprimanded pursuant to his aforementioned NJP. See enclosure (16).

n. By signature dated 22 December 2016, the ASN(M&RA) approved the recommendation of the Commander, NPC, directing Petitioner's separation from the Navy with a general (under honorable conditions) characterization of service. See enclosure (16).

o. On 13 January 2017, Petitioner was separated with a general (under honorable conditions) characterization of service by reason of misconduct due to commission of a serious offense and assigned a reentry code of RE-4 (not recommended for reenlistment). His issued DD Form 214 does not contain the required block 18 "continuous honorable service" language that reflects his honorable service during his first three enlistments from 13 May 1999 to 20 May 2014. See enclosure (17).

p. Petitioner contends in enclosure (1) that the NRD [REDACTED] CO was dissatisfied with the legitimate outcome of the ADB proceedings, and "circumvented the system by providing embellished, biased and inaccurate information" in enclosure (13). As a result, he asserts that he was ultimately separated for misconduct that he did not commit. Accordingly, Petitioner asserts that the reliance upon these errors by the chain of command, up to and including the Commander, NPC, in recommending, and the ASN (M&RA), in approving his separation with a general (under honorable conditions) characterization of service, was fundamentally unfair and unjust. Following are the specific allegations of error in enclosures (13) and (16) asserted by Petitioner:

(1) Enclosures (13) and (16) incorrectly state that Petitioner made multiple false official statements. Petitioner contends that there was only one violation of Article 107, UCMJ, and notes that the PRB did not recommend NJP for a violation of Article 107, UCMJ, because it found Petitioner's statements to be only misleading rather than "outright lies."

(2) Enclosure (13) incorrectly states that Petitioner received a written reprimand for his misconduct, as he was only admonished for his misconduct.

(3) Enclosures (13) and (16) incorrectly allege that Petitioner "wrongfully inserted himself into the recruitment of a future Sailor in order to pursue a sexual relationship with the mother." Rather, he contends that he was assigned to the recruitment of FS by the unit when the previously assigned recruiter was removed for misconduct not related to the FS's mother. Petitioner reiterated his testimony from the ADB that the FS was making poor decisions and Petitioner was concerned that this would affect his ability to serve.

(4) Enclosures (13) and (16) incorrectly allege that Petitioner wanted to pursue a sexual relationship with FS's mother. He asserts that there was nothing sexual about the relationship, and noted that FS's mother stated that they were not in a relationship.

(5) Enclosures (13) and (16) falsely allege that "[a]fter [Petitioner's] sexual advances were rejected by the mother, [Petitioner] purposely discontinued communication with the [FS] and tried to attrite him from the Navy altogether and denied it when questioned by the



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command.” Petitioner asserts that this information was not true because there was never any sexual advances made toward FS’s mother, and that he made his command aware of the relationship after reviewing reference (b).

(6) Enclosure (13) and (16) incorrectly describes the ADB proceedings, in that they state that Petitioner was notified that he was being processed for administrative separation for misconduct by commission of a serious offense. Rather, Petitioner asserts that he was notified that he was being processed for separation only for “(1) unsatisfactory performance, (2) violating Article 92, [UCMJ,] and (3) violating Article 107, [UCMJ].” He noted that the ADB found insufficient evidence to support Petitioner’s separation for failure to complete the conversion process, and recommended retention for the misconduct for reasons that were not addressed in enclosure (16).<sup>1</sup>

q. In addition to citing the factual errors contained in enclosures (13) and (16), as discussed in paragraph 4p above, Petitioner also asserted that they excluded substantial mitigating evidence. For example, Petitioner asserts that he took responsibility for his conduct and admitted to breaking the fraternization policy, and that there was never any sexual relationship between him and FS’s mother.

r. Petitioner also provided several legal arguments to support his contention that his separation with a general (under honorable conditions) was unjust. His legal arguments are summarized as follows:

(1) Petitioner’s characterization of service should be honorable because his separation violates reference (f). For this reason, he should be honorably retired with 20 years of service. Specifically, Petitioner asserts that reference (f) prohibits the separation of Sailors on the basis of conduct that has been subject to an ADB resulting in a final determination by a separation authority that the Sailor should be retained. Petitioner noted that the ADB found that the misconduct in question did not warrant separation, and that the command should have accept this result. He further noted that his evaluation reports subsequent to his misconduct were favorable and that he received a commendation during this period. Petitioner asserts that his command violated references (f) and (g) by re-litigating the separation when it didn’t like the ADB results, and that it was limited in what it could submit to the separation authority. Petitioner further asserted that his due process rights were violated when the NRD [REDACTED] CO exaggerated his misconduct and forwarded this information without providing him the opportunity to respond to it, and cited to *Kennedy v. United States*, 845 F.3d 1376 (2017), to support his contention that he is due relief for a violation of his due process rights. He further cited to *Strand v. United States*, 138 Fed. Cl. 633 (2018) to support his contention that granting his full retirement is an appropriate remedy.

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<sup>1</sup> The Board notes that here, as well as other places throughout his petition for relief, Petitioner refers to enclosures (13) and (16) interchangeably. He occasionally refers to the “December 2016” memorandum (i.e., enclosure (16)) in seeming reference to enclosure (13). As enclosure (13) was forwarded to the ASN (M&RA) with enclosure (16), the Board treated these two documents as interchangeable in its review of Petitioner’s case.



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(2) Petitioner's characterization of service should be upgraded because he was wrongfully separated from the U.S. Navy. Reference (h) permits the ADSEP of Sailors who fail to complete conversion per reference (c), and reference (c) states that such Sailors may be separated by reason of unsatisfactory performance under reference (d). The ADB, however, recommended that Petitioner be retained after he failed to complete his conversion. Note 1 of reference (c) states that members meeting the criteria for ADSEP due to misconduct will be processed for ADSEP under the appropriate MILPERSMAN article(s). When the ADB recommended to retain him and he continued to demonstrate his value to the Navy as evidenced by his evaluation reports, Petitioner should have been allowed to complete his service. Petitioner also noted that reference (f) requires units to provide Service members with training, motivation, and professional leadership to enable them to meet required standards of performance, conduct and discipline, and that this was not provided to Petitioner. Rather, Petitioner asserts his unit went behind his back to re-litigate his ADB results, and did not consider his rehabilitation potential. Petitioner argued that reference (d) requires counseling to be administered prior to separating Sailors for failure to complete the change of rating conversion process, and that no such counseling was ever administered in this case. Further, Petitioner commented that reference (c) provides that the characterization of service for members separated for failure to complete the rating conversion process should be honorable unless a general (under honorable conditions) characterization of service is otherwise warranted, and that he was never properly considered for an honorable characterization of service.

s. Petitioner contends his 17 years and eight months of outstanding and faithful service warrant an honorable characterization of service. As support for his contention, Petitioner points to his numerous awards, distinguished tours as a Navy recruiter, his evaluation reports which consistently rated him at 4.0 or above, except for two when he received a 3.67 and 3.86, and the 11 times he was considered an "early promote." He further contends the incident which led to his separation was an isolated incident, a "mere aberration not reflective" of his otherwise honorable and dedicated service. He states the ADB specifically considered all these facts and circumstances and recommended to retain him and, in contrast, his unit "exaggerated facts to separate him." Petitioner also points out that he continued to serve honorably for a 17 months after the misconduct.

t. Petitioner contends his post-service record of commitment to public service warrants consideration by the Board because it proves that his one instance of misconduct was completely out of character for his otherwise outstanding and dedicated naval service. He notes the following post-service accomplishments:

- (1) Passed the [REDACTED] Commission on Law Enforcement Peace Officer Licensing Exam
- (2) Completed [REDACTED] Community College Police Academy
- (3) Completed Federal Emergency Management Administration (FEMA) Emergency Planning Course
- (4) Completed the [REDACTED] Security Academy Basic Security Officer Training Course and Personal Protection Officer Training Course



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u. By memorandum dated 4 August 2020, the NPC Office of Legal Counsel provided an AO to the Board. The AO recommended that Petitioner's request for relief be disapproved. Specifically, the AO contends that the Petitioner received all due process afforded to him in the administration of his NJP, the conversion request, and his ADB. It further contends that the NRD [REDACTED] CO was authorized to recommend Petitioner's separation despite the ADB recommendation IAW references (f) and (j), and the ASN (M&RA) was authorized to direct Petitioner's separation under the same authorities. See enclosure (20).

v. By letter dated 16 September 2020, Petitioner responded to NPC AO. In this response, Petitioner reiterated that the injustice in question in this case was that the Navy separated Petitioner based upon incorrect misconduct and erroneous derogatory information that he was never afforded the opportunity to rebut. It further notes that the AO failed to address Petitioner's petition, exhibits, and arguments, and asserted injustices. Accordingly, Petitioner asserted that enclosure (20) was arbitrary and capricious. The remainder of Petitioner's rebuttal reiterated arguments previously made in enclosure (1) and captured herein. See enclosure (21).

w. Reference (f) provides that the service Secretary concerned may direct the separation of any enlisted Service member prior to expiration of term of service after determining it to be in the best interest of the Service. Reference (g) provides the authority and procedure to request such action by the Secretary of the Navy in the case of Sailor retained by an ADB.

#### BOARD CONSIDERATIONS:

The Board carefully and deliberately considered all of Petitioner's contentions of error or injustice pertaining to the process by which he was separated. In addition to reviewing the circumstances of his separation for errors or injustice, the Board also reviewed Petitioner's case in accordance with the guidance in reference (j) to determine whether relief is warranted in the interests of justice under the totality of the circumstances. In this regard, the Board considered, among other factors, Petitioner's long and distinguished service in the Navy, as evidenced by his nearly 18 years of service and the numerous awards and decorations reflected in enclosure (17); that the misconduct in question in this case appears to be a singular departure from otherwise honorable service; that Petitioner took responsibility for his actions, as evidenced by his guilty plea during his NJP proceedings; that Petitioner received generally favorable fitness reports leading up to his separation; that Petitioner provided numerous letters attesting to his favorable character, trustworthiness, reliability, and contributions within his community; that Petitioner participated in a humanitarian mission at [REDACTED] after a natural disaster; that Petitioner has volunteered his time to assist Veterans and also with Habitat for Humanity; that Petitioner has already established an impressive post-service employment record dedicated to public service, as evidenced by his law enforcement and FEMA certifications; that FS's mother asserted that there was no sexual relationship between her and Petitioner, and that she believed he should be retained in the Navy; and that the ADB recommended that Petitioner be retained in the Navy despite substantiating the allegations of misconduct against him.

After this careful and deliberate consideration, each of the Board members reached different conclusions and made different recommendations, as reflected below.



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BOARD MEMBER #1 CONCLUSION:

Upon careful review and consideration of all the evidence of record, Board Member #1 (BM1) found no error or injustice in the process used to separate the Petitioner. BM1 also found that the totality of the circumstances did not warrant any relief, and that Petitioner's request should be denied.

With regard to Petitioner's contention that the NRD [REDACTED] CO exaggerated the Petitioner's misconduct, and that the Navy therefore relied upon inaccurate information in the decision to separate Petitioner with a general (under honorable conditions) characterization of service (see paragraph 4p above), BM1 found that the errors asserted were either not errors or were harmless in nature. Even considering these harmless errors collectively, BM1 found that there was insufficient evidence of material error or injustice warranting relief. Specifically, BM1 found that the references to "multiple" false official statements and the reference to a "written reprimand" in enclosure (16) rather than the "admonition" that Petitioner actually received was clearly harmless. BM1 also found no error in how enclosures (13) and (16) described the ADB proceedings, as the misconduct that Petitioner was notified of constituted the "serious offense(s)" described in the memoranda. BM1 also found that the NRD [REDACTED] CO did not create new facts and was not factually incorrect in her description of Petitioner's misconduct, as Petitioner contends, but rather expressed merely her opinion regarding Petitioner's conduct as was within her authority. BM1 found no error or injustice in the failure of enclosure (13) or (16) to mention the "substantial mitigating evidence" that Petitioner contends should have been included to accurately "reflect his integrity and truthfulness." In making these findings, BM1 noted that the Petitioner's ADB record of proceedings was attached to enclosure (13) when it was forwarded up for a decision, and that Petitioner had elected to "obtain copies of documents that will be forwarded to the separation authority supporting the basis for the proposed separation." Applying the presumption of regularity, which he specifically found the Petitioner failed to overcome, BM1 determined that the decision makers would have had access to all of the relevant and accurate facts, to include the mitigating evidence that Petitioner cited from the ADB, when the decision was made to separate Petitioner with a general discharge. Accordingly, BM1 rejected Petitioner's contention that the process used to separate him was either an error or unjust.

BM1 was not persuaded by Petitioner's legal argument that his separation was prohibited by reference (f), and that he was denied his due process rights (see paragraph 4r(1) above). He found that Petitioner's separation was fully in compliance with the Enlisted Administrative Separations Manual, as well as references (f) and (g). Although an ADB voted to retain Petitioner after substantiating the misconduct alleged against him, both reference (f) and (g) provide separation procedures under such circumstances that were fully complied with in this case. Enclosure (13) complied with the requirements of reference (g) for separations under these circumstances, and as noted above BM1 did not find that the NRD [REDACTED] CO embellished or created new facts within it. She also did not "re-litigate" the ADB proceedings, as Petitioner contends, but rather complied with Navy and Department of Defense regulations to seek approval of Petitioner's separation for the Navy when she believed that the ADB findings and recommendations were clearly erroneous and not in the best interests of the Navy. As with his findings regarding the contents of enclosure (13) and (16) above, BM1 applied the presumption



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of regularity to reach his conclusion that Petitioner received all process due to him, and that the decision makers considered the proper materials in making their decisions. Petitioner fully defended himself against the allegations of misconduct that resulted in his ultimate separation at his ADB, and this material would have been available to both the Commander, NPC, and the ASN (M&RA) when they made their decisions. Accordingly, BMI found that Petitioner's separation was fully in compliance with all applicable regulations.

BMI was also not persuaded by Petitioner's argument that his separation was wrongful because his command failed to comply with certain regulatory requirements (see paragraph 4r(2) above). BMI noted that the Commander, NPC, stated in enclosure (1) that "the needs of the Navy do not support conversion" and directed processing for failure to complete change of rating (conversion). He further noted that reference (i) requires commands to "process members for all reasons for which minimum criteria are met"; therefore, it was not error for the command to process Petitioner for separation for the related misconduct. BMI concluded that the command properly processed Petitioner for separation as directed by the Commander, NPC and, although counseling was not documented as required by "Note 1" of reference (d), Petitioner was well aware of the circumstances related to his separation processing for unsatisfactory performance due to failure to complete change of rating (conversion) and had the opportunity to address any discrepancies or errors in the processing at the ADB. BMI also concluded separation with a general (under honorable conditions) characterization of service, vice honorable, was warranted because he was not separated solely for failure to complete the conversion process, but rather was separated for his serious misconduct. Noting Petitioner's repeated contention that his evaluation reports reflected that he continued to make valuable contributions to the unit and the Navy, BMI found that the subject evaluations did not reflect the contributions expected of a Career Force Chief Petty Officer, but rather more accurately describe duties assigned to him only because he could not serve in his rating due to his own misconduct. Accordingly, BMI rejected Petitioner's contention that he was wrongfully separated from the Navy.

Finally, BMI considered the totality of the circumstances to determine whether the interests of justice warrant granting relief to Petitioner in accordance with the guidance provided by reference (j). In this regard, BMI considered all of the potentially mitigating factors discussed above. While he acknowledged Petitioner's long and mostly honorable service to the Navy, his post-service contributions to society, and that the conduct in question was most likely an aberration in an otherwise meritorious career, BMI did not believe that relief was warranted under the totality of the circumstances. In making this determination, BMI noted that as a Chief Petty Officer serving as a Recruiter, Petitioner was assigned to a position of trust and confidence. He was responsible for providing the first impression of the Navy for much of the general public. Given this responsibility, BMI found that Petitioner's violation of the trust and confidence afforded to him was so egregious, and potentially damaging to the reputation of the U.S. Navy, that the mitigating circumstances were not sufficient to warrant relief. Accordingly, BMI determined that Petitioner's early separation from the Navy with a general (under honorable conditions) discharge was appropriate under the circumstances.

#### BMI RECOMMENDATION:

In view of the above, BMI recommends the following:



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That no changes (except that discussed immediately below) be made to Petitioner's naval service records, and that no relief be granted.

BM1 noted block 18 of enclosure (17) does not contain continuous honorable service language for the enlistment periods in which he served honorably. Accordingly, BM1 recommends NPC be directed to take appropriate administrative action to correct this administrative error.

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

That upon request, the Department of Veterans Affairs (VA) be informed that Petitioner's application was received by the Board on 13 March 2020.

BOARD MEMBER #2 CONCLUSION:

Upon careful review and consideration of all the evidence of record, Board Member #2 (BM2) found no error or injustice in the process used to separate the Petitioner. However, BM2 found that Petitioner's overall military record and post-service accomplishments warrant partial relief in the form of an upgrade to Petitioner's characterization of service.

BM2 concurred with BM1's conclusions, as discussed at length above, regarding Petitioner's contentions regarding the contents of enclosure (13) and (16), the compliance with applicable regulations and procedures in Petitioner's separation from the Navy, and Petitioner's contentions regarding his wrongful separation from the Navy. Accordingly, BM2 found no error or injustice in the circumstances of Petitioner's separation from the Navy.

Applying the guidance of reference (j), however, BM2 found that the interests of justice warrant an upgrade to Petitioner's characterization of service to fully honorable. In this regard, BM2 considered Petitioner's nearly 18 years of mostly honorable and meritorious service. BM2 also noted that Petitioner continued to provide honorable service after being punished for his misconduct and retained by the ADB, and that he has continued to demonstrate a commitment to public service since his discharge from the Navy. Based upon this, BM2 concluded that the positive aspects of Petitioner's record outweighed the isolated incident of misconduct with regard to determining the appropriate characterization of Petitioner's service. BM2 did not, however, find sufficient mitigating evidence to warrant relief from the ASN (M&RA)'s decision to administratively separate Petitioner from the Navy.

BM2 RECOMMENDATION:

In view of the above, BM2 recommends the following corrective action:

That Petitioner be issued a new DD Form 214 indicating his characterization of service as "honorable," the narrative reason for his separation as "secretarial authority," the separation code as "JFF," the separation authority as "MILPERSMAN 1910-164," and the reentry code as "RE-1J."



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That no further changes be made to Petitioner's record.

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

That upon request, the VA be informed that Petitioner's application was received by the Board on 13 March 2020.

BOARD MEMBER #3 CONCLUSION:

Upon careful review and consideration of all the evidence of record, Board Member #3 (BM3) found significant error and injustice in the process used to separate the Petitioner. Accordingly, BM3 found that Petitioner's requested relief should be approved.

In making this determination, BM3 noted that the NRD [REDACTED] CO who recommended that Petitioner be separated contrary to the recommendation of the ADB had served as the detachment executive officer (XO) when the previous CO submitted a forced conversion package related to Petitioner. Given that reference (e) provides that "forced conversions are not to be used in lieu of appropriate disciplinary measures," and that requests should only be submitted for "those members who are recommended for retention, have potential for future Naval Service, can screen for operational duty (sea duty and overseas), and are capable of serving in the requested rating," BM3 found the decision to recommend Petitioner for separation despite the retention recommendation of the ADB after the previous CO recommended his forced conversion to be inconsistent and therefore unwarranted. Accordingly, BM3 found the decision of the NRD [REDACTED] CO to process Petitioner for misconduct as well as for failure to convert after the command had already previously determined not to process Petitioner for the misconduct to be unjust.

BM3 agreed with the other Board members that some of the errors asserted by Petitioner in enclosure (13) and (16) were harmless. Specifically, BM3 agreed that the references to a "written reprimand" and the description of the ADB procedures, if erroneous, were harmless. BM3 also agreed that there was no error in the exclusion from enclosure (13) of the substantial mitigating evidence asserted by the Petitioner, but she did find it to be unjust that the memorandum failed to even highlight such evidence.

While agreeing with the other Board members regarding some of their conclusions regarding enclosures (13) and (16), BM3 disagreed overall with their conclusion by finding several errors or injustices. Specifically, BM3 concluded that the NRD [REDACTED] CO made new allegations of misconduct that were not considered by the ADB in enclosure (13). The statements asserting that Petitioner made "an entirely false statement" when he stated he brought any information regarding a personal relationship with [FS]'s mother to the Command Master Chief (CMC) "or [her] when [she] served as Executive Officer" represented a new allegation of misconduct not previously considered by the ADB. Likewise, the comment that "[Petitioner] fabricated facts to present himself in the best light and avoid any meaningful accountability for his actions" also represented a new allegation of misconduct not considered by the ADB. BM3 found it to be unjust that Petitioner was never provided the opportunity to respond to these new allegations of misconduct before the ASN (M&RA) relied upon them to separate Petitioner.



BM3 also found enclosures (13) to be misleading, embellished, inconsistent, factually incorrect, exaggerated, and, not only subjective, but totally lacking in objectivity. After reviewing the record, BM3 determined several statements in enclosure (13) to be unsupported. Specifically, BM3 found no support for the statement that Petitioner “used his position as a senior recruiter to insert himself into the recruitment of [FS] so that he could pursue a sexual relationship with [FS]’s mother.” To the contrary, BM3 found that the record showed that it was FS’s mother who initiated the contact.<sup>2</sup> BM3 also noted that enclosure (13) was the first time that Petitioner’s fraternization with FS’s mother was overtly described as sexual in nature and/or purpose.<sup>3</sup> Finally, BM3 noted that the statement in enclosure (13) that Petitioner “tried to attrite [FS] from the Navy altogether” was unsupported, but unlike the other two Board members, did not find this error to be harmless. BM3 disagreed with the other two Board members, finding that the presumption of regularity in the separation process was overcome by the Petitioner, and therefore it was unjust that he never had the opportunity to rebut these new allegations of misconduct prior to being considered by the separation authority.

Finally, in applying the guidance of reference (j), BM3 concluded that interests of justice demand relief for the Petitioner under the totality of the circumstances. BM3 believed that Petitioner’s 17 years and eight months of honorable and meritorious service to the Navy, as well as his post-service contributions to the community, clearly outweighed the isolated and exaggerated incident of misconduct that resulted in Petitioner’s separation from the Navy with a general (under honorable conditions) characterization of service.

Based upon this review, BM3 determined that it was in the interest of justice for Petitioner’s involuntary separation due to misconduct to be rescinded. BM3 found that the repeated and fundamental errors in enclosure (13), which furthered certain other errors, constituted material error and injustice. Further, BM3 concluded that the injustice created by failing to provide Petitioner the opportunity to review, rebut, or comment on the new information presented in enclosure (13) violated Petitioner’s right to due process, and that the only appropriate relief, given the specific facts and circumstances of Petitioner’s situation, is to correct the injustice by granting Petitioner constructive credit to attain 20 years of active service and retire.

BM3, having determined full relief should be granted as explained above, found the remaining contentions were moot and did not make specific comments.

#### BM3 RECOMMENDATION:

In view of the above, BM3 recommends the following corrective action:

That Petitioner’s DD Form 214, reflecting that he was discharged from the Navy with a general (under honorable conditions) characterization of service for misconduct, be rescinded and removed from Petitioner’s naval service records.

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<sup>2</sup> BM1 and BM2 concurred with this observation, but concluded that it was harmless error.

<sup>3</sup> BM1 and BM2 also concurred with this observation, but concluded that it was a harmless error in that the nature and/or purpose of the relationship could be inferred from the evidence.



Subj: REVIEW OF NAVAL [REDACTED]  
[REDACTED] 2867

That Petitioner receive constructive service credit from 13 January 2017 until the end of his enlistment contract on 20 May 2019, thus providing sufficient creditable service to transfer Petitioner to the Fleet Reserve.

That Petitioner be issued a new DD Form 214 reflecting that he was transferred to the Fleet Reserve after completing 20 years of active service. The SPD code should be changed to NBD (Sufficient Service for Retirement), and all necessary changes should be made to reflect this type of separation.

Note: The Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner's records to determine if Petitioner is due any back pay and/or allowances.

That no further changes be made to Petitioner's record.

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

That upon request, the VA be informed that Petitioner's application was received by the Board on 13 March 2020.

5. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

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

12/11/2020

[REDACTED]

Executive Director



Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],  
USN, XXX-XX-[REDACTED]

PRINCIPAL DEPUTY, ASSISTANT SECRETARY OF THE NAVY (M&RA) DECISION:  
(Performing the Duties of the Assistant Secretary of the Navy (M&RA))

Reviewed and approve BOARD MEMBER #1 (BM1) recommendation. (Deny requested relief, but correct DD Form 214)

Reviewed and approve BOARD MEMBER #2 (BM2) recommendation. (Partial Grant – deny constructive credit for retirement but grant upgrade to characterization of service, change narrative reason to “secretarial authority”, and change reentry code to “RE-1J”)

Reviewed and approve BOARD MEMBER #3 (BM3) recommendation. (Grant – award constructive credit to allow for retirement, upgrade characterization of service, change narrative reason to “Sufficient Service for Retirement”, and change reentry code to “RE-2”)

2/10/2021

[REDACTED]

PTDO ASN(M&RA)