



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

██████████
Docket No: 1539-21
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 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 w/attachments
(2) DD Form 214 (19990721-20000630)
(3) USNA Superintendent Memo 1-200, subj: Discharge from the Naval Academy and Naval Service, 8 August 2004
(4) DD Form 214 (20000630-20040713)

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his characterization of service be upgraded to honorable and that his narrative reason for separation be changed to "Secretarial Authority."

2. The Board reviewed Petitioner's allegations of error or injustice on 6 August 2021 and, pursuant to its regulations, determined that no corrective action should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record,¹ and applicable statutes, regulations, and policies, to include reference (b).

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

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

¹ Much of Petitioner's naval record no longer exists. His Official Military Personnel File is missing virtually all of the relevant information regarding his service at the United States Naval Academy, including the investigation which found him complicit in the theft of calculators, the subsequent court-martial charges preferred against him, or his request for administrative separation in lieu of court-martial and the associated administrative separation documentation. The presumption of regularity applies in this regard.

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[REDACTED] USNA, XXX-XX-[REDACTED]

b. Although enclosure (1) was not filed in a timely manner, the Board found it to be in the interests of justice to waive the statute of limitations and to review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 21 July 1999 to attend the U.S. Naval Academy Preparatory School in [REDACTED]. He was honorably discharged on 30 June 2000 to enroll in the United States Naval Academy (USNA). See enclosure (2).

d. During his third year at the USNA, an investigation found that Petitioner was complicit in the theft of calculators.² See enclosure (1).

e. Court martial charges were subsequently preferred against Petitioner for his role in the theft of the calculators. After conferring with counsel, Petitioner submitted a request for discharge in lieu of trial by court-martial. See enclosure (1).

f. By letter dated 4 June 2004, the Superintendent, USNA, recommended that Petitioner be disenrolled from the USNA and discharged from the Navy. See enclosure (3).

g. On 13 July 2004, the Secretary of the Navy (or his designee) approved the recommendation of the Superintendent, and directed that Petitioner be disenrolled from the USNA, discharged from the Navy, and required to repay \$124,840.09 in expenditures made on his education at the USNA.³ See enclosure (3).

h. Effective 13 July 2004, Petitioner was discharged from the Navy under OTH conditions in lieu of trial by court martial. See enclosure (4).

i. Petitioner, through counsel, apologized for his actions which resulted in his disenrollment from the USNA. He noted that he was not an active participant in the theft of the calculators, but acknowledged that he should have come forward to report his friend rather than permitting him to store the stolen property in his room. Since his discharge, Petitioner learned the wealth management business by working at a firm in northern [REDACTED] and subsequently established a successful financial planning practice, through which he has helped over 6,000 state employees in [REDACTED] plan for retirement and several [REDACTED] school districts to establish retirement plans for their employees. He also dedicates his time and resources to assist [REDACTED] teachers in his role as the financial spokesperson for the [REDACTED] Educators Association. Petitioner contends that he has been inequitably stigmatized and harmed by his OTH discharge, which continues to cause him and his family undue harm more than 16 years

² Petitioner contends that he was not an active participant in the theft, but that he did permit his friend to store the stolen property in his room.

³ Due to the absence of documentation in Petitioner's naval record, it is not clear whether Petitioner's disenrollment and discharge was approved by the Secretary of the Navy himself, or by the Assistant Secretary of the Navy for Manpower and Reserve Affairs as his delegate.

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after his discharge from the Navy. He asserts that he has learned from the mistakes of his youth and used his unfortunate and embarrassing situation to grow as an individual. See enclosure (1).

CONCLUSION:

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

The Board found no error or injustice in Petitioner's disenrollment from USNA and/or discharge from the Navy under OTH conditions. Petitioner does not contest the findings of the investigation which resulted in his discharge. Even if he was not an active participant in the theft of the calculators, by allowing his friend to store the stolen property in his room Petitioner became an accomplice to the theft and subject to criminal liability. Relying upon the presumption of regularity, the Board presumes that the court-martial charges against Petitioner were properly preferred, that Petitioner requested separation in lieu of trial by court-martial after consulting with qualified counsel, and that his request for separation was properly reviewed and ultimately acted upon by an official with authority to do so. Under these circumstances, an OTH characterization of service would not only be appropriate, but it would be expected.

The Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Board considered, among other factors, that Petitioner demonstrated genuine contrition for the misconduct which resulted in his discharge; Petitioner's contention that he was not an active participant in the theft of the calculators while at the USNA; Petitioner's post-service record of accomplishment, to include his establishment of a successful financial planning practice through which he has assisted thousands of individuals to establish financial security; that Petitioner's professional accomplishments and trust demonstrate his rehabilitation from the misconduct for which he was separated; the stigmatizing effect of Petitioner's OTH characterization of service upon both him and his family; and the passage of time since Petitioner's discharge. While the Board was impressed with Petitioner's post-service accomplishments, especially in light of the stigma associated with the characterization of his naval service, it did not find his OTH characterization to be inequitable. By voluntarily requesting separation in lieu of trial by court-martial, Petitioner escaped the potential of a Federal felony conviction for a larceny charge, which would have been far more stigmatizing than his OTH characterization of service. An OTH characterization of service is the expected result of such a discharge, and Petitioner would have acknowledged this upon making his request. While the Board regrets that Petitioner continues to be stigmatized by his characterization of service, such stigma is the natural consequence of the circumstances under which he was separated from the Navy. Unfortunately, the Board did not find Petitioner's post-service record and accomplishments so significantly meritorious to justify the extraordinary relief requested. Accordingly, the Board found that Petitioner's characterization was, and remains, appropriate under the totality of the circumstances.

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RECOMMENDATION:

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

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

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

9/14/2021

[REDACTED]

Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Deny Relief)

SEP 28 2021

Petitioner's Request Approved (Upgrade to Honorable; Change Narrative Reason for Separation to "Secretarial Authority")

[REDACTED]

Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)