



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

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 regulation within the Department of the Navy.

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

c. Petitioner enlisted in the Navy and began a period of active duty service on 24 October 1988. See enclosure (2). He reenlisted on 9 July 1992. See enclosure (3).

d. On 13 January 1997, Petitioner was convicted by a special court-martial (SPCM), contrary to his plea, of wrongfully using cocaine in violation of Article 112a, Uniform Code of Military Justice. He was sentenced to 30 days of confinement and a reduction in rank.<sup>1</sup> See enclosure (4).

e. By memorandum dated 21 January 1997, Petitioner was notified that he was being considered for an administrative separation from the naval service by reason of misconduct due to drug abuse as evidenced by his SPCM conviction. See enclosure (5).

f. On 21 January 1997, Petitioner waived his right to submit any matters for consideration by the separation authority and to request an administrative separation board. See enclosure (6).

g. By memorandum dated 27 January 1997, Petitioner's commander recommended that he be separated from the Navy under OTH conditions for misconduct due to drug abuse, as evidenced by his SPCM conviction. See enclosure (7).

h. By memorandum dated 14 May 1997, the Chief of Naval Personnel (CNP) recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) that Petitioner be separated under OTH conditions for misconduct due to the commission of a serious offense.<sup>2</sup> See enclosure (8).

i. On 19 May 1997, the ASN (M&RA) approved the recommendation of the CNP, directing that Petitioner be separated under OTH for misconduct.<sup>3</sup> See enclosure (8).

j. On 13 June 1997, Petitioner was discharged from the Navy under OTH conditions for misconduct. His reentry (RE) code was assigned as "RE-4." See enclosure (2).

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<sup>1</sup> Petitioner was reduced from E-4 to E-3.

<sup>2</sup> This case was forwarded to the ASN (M&RA) for action because an administrative separation under OTH conditions requires Secretarial approval when the separation is based upon misconduct that was considered by a court-martial, but a punitive discharge was not adjudged.

<sup>3</sup> Enclosure (8) includes the ASN (M&RA)'s signature, but does not indicate approval or disapproval of the CNP's recommendation. The Board applied the presumption of regularity to establish that the ASN (M&RA) intended to approve the separation since that is the action which was executed.

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k. Petitioner was charged with the [REDACTED] murder of an 82-year old woman who ran the halfway house where he previously resided by forcing her to ingest rubbing alcohol. After forcing the woman to ingest rubbing alcohol, Petitioner allegedly set the house on fire. The [REDACTED] Fire Department discovered the woman's lifeless body in the house after extinguishing the fire. See enclosure (9). At the time that he was charged with this 8 May 2018 murder and arson, Petitioner was already serving in prison for an unrelated arson on 9 May 2018. See enclosure (10).<sup>4</sup>

l. Petitioner has requested that his characterization of service be upgraded to general (under honorable conditions) and that he be allowed to reenlist in the Navy because his SPCM only sentenced him to a reduction in rate and 30 days of confinement. It did not adjudge a punitive discharge. He asserts that his command forced him out of the Navy, and requested that the Board note the medals and commendations in his record. See enclosure (1).

#### BOARD CONCLUSION:

After 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 evidence of error or injustice in Petitioner's discharge under OTH conditions for misconduct. He was convicted of wrongfully using cocaine by a SPCM, was properly notified of the proposed separation and waived his rights after consulting with counsel, and his OTH discharge was approved by the ASN (M&RA).

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's SPCM did not adjudge a punitive discharge and only reduced Petitioner one grade for the misconduct which was the basis for his separation; Petitioner's contention that his command "forced" him out of the Navy; Petitioner's otherwise meritorious service in the Navy, as evidenced by his commendations and high performance ratings; the relatively minor nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. Under most circumstances, the Board would have found relief to be warranted given the minor nature of Petitioner's misconduct and his otherwise meritorious service. However, paragraph 7d of reference (b) instructs that the Board should also consider "negative post-conviction conduct, including any arrests, criminal charges, or any convictions since the incident at issue." Although the focus of reference (b) was on clemency from criminal convictions, it specifically provided that its guidance was to apply to discharge upgrades on the grounds of injustice as well as clemency from court-martial convictions. Accordingly, the guidance to consider negative post-conviction conduct also applies to negative post-service

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<sup>4</sup> The Board is assuming that Petitioner is the person named in enclosures (9) and (10) based upon several factors. First, Petitioner's name is essentially the same as the person named in these articles. Second, Petitioner's address listed on enclosure (1) is the [REDACTED] which is where the person named in enclosure (10) was incarcerated on unrelated arson charges when he was charged with the murder. Finally, enclosure (2) reveals that Petitioner was 49 years old at the time of these articles in 2018, which was the same age as the person named in the articles. If this assumption was inaccurate, Petitioner may request reconsideration by the Board upon the submission of new matters establishing that he was not the subject of these articles.

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conduct. Petitioner is currently incarcerated for the murder of a woman who ran the halfway house where he previously resided, as well as for arson of her home and another property. Any consideration of the totality of the circumstances must include this post-service conduct. The depraved character suggested by these acts leaves the Petitioner far short of being worthy of the Board's equitable relief authority. Accordingly, the Board determined that no relief is warranted under the totality of the circumstances.

**BOARD 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.

6/7/2021

[REDACTED]

Executive Director

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

Board Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Full Relief – Upgrade to General (under honorable conditions); Change Reentry Code to RE-1)

Petitioner's Request Partially Approved (Partial Relief – Upgrade to General (under honorable conditions))

**JUN 22 2021**

[REDACTED]

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