



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

██████████  
Docket No: 3721-21

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) 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  
(2) DD Form 214  
(3) NAVPERS 1070/602, Dependency Application/Record of Emergency Data  
(4) NAVPERS 1070/602, Dependency Application/Record of Emergency Data (Updated)  
(5) NAVPERS 1070/601, Immediate Reenlistment Contract, 30 March 2017  
(6) NAVPERS 1616/26, Evaluation Report & Counseling Record (E1-E6) (20170316-20170726)  
(7) Petitioner Letter to Member of Congress, 12 Dec 19

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his characterization of service be upgraded from general (under honorable conditions) to honorable, and that his reentry (RE) code be changed to RE-1.<sup>1</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 25 June 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, 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:

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<sup>1</sup> Petitioner originally petitioned the Board on 4 February 2020 in Docket No. 3519-20; his case was administratively closed after 14 months because Petitioner had not first applied for relief to the Navy Discharge Review Board. Following communications with the Office of Legislative Affairs and in an effort to provide Petitioner expeditious review for a previously administratively closed request, the Board reopened Petitioner's case on 17 June 2021 at Docket No. 3721-21.

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- a. Petitioner enlisted in the Navy and began a period of active duty service on 8 July 2013. See enclosure (2).
- b. On 1 October 2013, Petitioner married his now-former spouse. See enclosure (3).
- c. On 15 June 2016, Petitioner and his former spouse were divorced See enclosure (4).
- d. On 30 March 2017, Petitioner reenlisted for a period of six years. See enclosure (5).
- e. On 15 June 2017, Petitioner received nonjudicial punishment (NJP) for making false official statements in violation of Article 107, Uniform Code of Military Justice (UCMJ), and for adultery in violation of Article 134, UCMJ. See enclosure (6).<sup>2</sup>
- f. On 26 July 2017, Petitioner was discharged from the Navy with a general (under honorable conditions) characterization of service for misconduct due to commission of a serious offense. He received a reentry code of RE-4.<sup>3</sup> See enclosure (2).
- g. Petitioner contends that he was separated for committing adultery after a separation agreement had already been signed between him and his spouse. Since being discharged with a general (under honorable conditions) characterization of service, he has completed Aircraft Mechanics School in ██████████, and he has had to work three jobs to keep up with his financial obligations. He seeks an upgrade to his characterization of service to restore his GI Bill benefits will be restored and a change to his RE code to provide him the option of reenlisting. See enclosure (7).

**MAJORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that relief is warranted in the interests of justice.

The Majority found no evidence of any error or injustice in Petitioner's discharge from the Navy for misconduct due to commission of a serious offense with a general (under honorable conditions) characterization of service.

In addition to reviewing the circumstances of Petitioner's discharge, the Majority 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 Majority considered that the state of ██████████ recognized Petitioner's divorce effective 15 June 2016, and that the UCMJ was amended in 2019 to permit a legal separation from a court of competent jurisdiction to be used as an affirmed defense to adultery allegations under Article 134 (Extramarital Sexual Conduct).

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<sup>2</sup> Petitioner's records do not include the NJP documentation, but the NJP is referenced in enclosure (5) and the adjudged reduction in grade to E-4 is reflected in enclosure (2). The presumption of regularity applies to the administration of this NJP.

<sup>3</sup> Petitioner's records do not include his administrative separation documentation. The presumption of regularity applies with regard the processing of his administrative separation for misconduct due to commission of a serious offense.

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The Majority also considered, among other factors, that Petitioner honorably completed his first period of enlistment; that Petitioner's evaluation reports prior to his NJP reflect positive contributions to the Navy, and highlight his performance as a versatile and highly reliable Sailor who was a key player in the success of the [REDACTED]; that Petitioner was no longer married at the time he received NJP for the offense of adultery; Petitioner's post-service accomplishments by completing Aircraft Mechanics School; and the relatively minor and nonviolent nature of Petitioner's misconduct. Based upon this review, the Majority determined that the mitigating factors outweighed the relatively minor misconduct for which Petitioner was discharged, and that relief is therefore warranted in the interests of justice.

#### MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his SPD code was "JFF"; and that his RE code was "RE-1J."

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

#### MINORITY CONCLUSION:

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

The Minority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b), but disagreed with the Majority's conclusion that the potentially mitigating circumstances outweighed Petitioner's misconduct. In reaching this conclusion, the Board noted that Petitioner's misconduct consisted of more than just adultery. In fact, the offense of false official statement, in violation of Article 107, UCMJ, for which Petitioner received NJP is a far more serious offense under the UCMJ than is adultery, with a maximum punishment of five years. Accordingly, even if changes in in the law mitigated Petitioner's adultery offense, the Minority found no mitigation for the more serious offense of false official statement. Considering that Petitioner was separated for committing a serious offense, the Minority found it likely that it was his false official statement, rather than the minor charge of adultery, which resulted in his discharge. Accordingly, the Minority found that Petitioner's characterization of service and RE code were, and remain, appropriate under the totality of the circumstances, and that relief is therefore not warranted.

#### MINORITY RECOMMENDATION:

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

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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.

6/28/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief – Upgrade to Honorable; Change to RE-1J)

~~MINORITY Recommendation Approved (Deny Relief)~~

7/12/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by [REDACTED]