



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

█
Docket No: 3755-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, 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 w/attachments
(2) DD Form 214
(3) NAVPERS 1070/607, Court Memorandum, 28 November 1982
(4) NAVPERS 1070/607, Court Memorandum, 29 March 1984
(5) NAVPERS 1070/607, Court Memorandum, 7 May 1984
(6) NAVPERS 1070/612, Administrative Remark (Substance Abuse Report), 16 May 1984
(7) Command Message, subj: [Petitioner]: Recommendation for Admin Separation by Reason of Misconduct due to a Pattern of Misconduct and Misconduct due to Drug Abuse, dtg 190702Z May 84
(8) COMNAVMIIPERSCOM Msg, subj: Misconduct Discharge ICO [Petitioner], dtg 241450Z May 84

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 4 August 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 record, 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 regulation within the Department of the Navy.

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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 review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 5 January 1981. See enclosure (2).

d. On 28 November 1982, Petitioner received nonjudicial punishment (NJP) for violating a lawful general order in violation of Article 92, Uniform Code of Military Justice (UCMJ),¹ and for unauthorized absence (UA) in violation of Article 86, UCMJ. See enclosure (3).

e. On 29 March 1984, Petitioner received his second NJP for UA in violation of Article 86, UCMJ; disrespect to a petty officer in violation of Article 91, UCMJ; provoking speech in violation of Article 117, UCMJ; and communicating a threat in violation of Article 134, UCMJ. See enclosure (4).

f. On 7 May 1984, Petitioner received his third NJP for UA in violation of Article 86, UCMJ, and for missing movement in violation of Article 87, UCMJ.² See enclosure (5).

g. On or about 4 November 1983, Petitioner was charged with driving under the influence of alcohol or drugs. See enclosure (6).

h. On 12 May 1984, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to a pattern of misconduct and drug abuse. See enclosure (7).

i. On 18 May 1984, Petitioner waived his right to request an administrative discharge board. See enclosure (7).

j. By message dated 19 May 1984, Petitioner's commander recommended that he be administratively discharged from the Navy for misconduct due to a pattern of misconduct and drug abuse. See enclosure (7).

k. By message dated 24 May 1984, the separation authority directed that Petitioner be administratively discharged from the Navy under other than honorable (OTH) conditions by reason of misconduct due to drug abuse. See enclosure (8).

l. On 22 June 1984, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (2).

m. Petitioner contends that his discharge was inequitable for the following reasons:

¹ Petitioner violated a lawful general regulation by using marijuana.

² This UA was for a period of 15 days, during which Petitioner missed his ship's movement.

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(1) Petitioner served honorably for more than three years and had received a number of awards. The offenses for which he was separated should not be enough to render the characterization of his service as anything but honorable.

(2) More than 35 years have passed since Petitioner's discharge, so it is an injustice to continue to stigmatize him, especially considering the circumstances surrounding his characterization of service as described on his DD Form 214 relative to his actual character of service while in the Navy.

(3) Petitioner admitted his mistakes and was fully punished by both society and the Navy through his separation. He has repaid his debt to society by fulfilling the terms of his NJP for such minor infractions, but continues living with the consequences of his mistakes today.

(4) Petitioner has demonstrated his rehabilitation potential. Since his discharge, he has worked in the construction industry as an electrical contractor and has become an Operations Manager for an engineering firm. He would have been able to correct his mistakes if he had been given the opportunity.

(5) Petitioner has been a model citizen since his discharge. He has no criminal record, no drug or alcohol abuse, and no "run-ins" with the law. He continues to serve the country and his community by overseeing the design, installation, and management of specialized security systems to provide security and necessary safety measures for his fellow Americans.

(6) Petitioner provided numerous letters attesting to his character, work ethic, and contributions to his community.

MAJORITY CONCLUSION:

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

The Majority found no error or injustice in Petitioner's original discharge under OTH conditions. With three NJPs, including multiple instances of drug abuse and UAs, Petitioner had established a pattern of misconduct that warranted his separation from the Navy under OTH conditions. It appears from the record that the procedures to separate Petitioner under OTH conditions was properly followed. The Majority was not persuaded by Petitioner's contention that he necessarily would have improved his conduct if given a chance, as he continued to engage in misconduct even after receiving NJP.

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 Board considered, among other factors, the entirety of Petitioner's career in the Navy, to include his receipt of the Sea Service Ribbon and Battle "E"; the numerous letters provided attesting to Petitioner's good character, work ethic, and contributions to his community; Petitioner's post-service record of employment and accomplishment, reflecting that he has successfully rehabilitated himself; the relatively minor nature of Petitioner's misconduct; Petitioner's relative

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youth and immaturity and the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon this review, the Majority determined that the potentially mitigating circumstances outweighed the misconduct for which Petitioner was discharged given the totality of the circumstances. Accordingly, the Majority found no useful purpose in continuing to stigmatize the entirety of Petitioner's naval service with an OTH characterization of service, and that Petitioner's service characterization should therefore be upgraded to general (under honorable conditions) in the interests of justice. Although the Majority found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, it did not find those mitigating circumstances to so substantially outweigh Petitioner's repeated misconduct to warrant the extraordinary relief requested by the Petitioner of an upgrade of his characterization of service to fully honorable.

In addition to determining that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice, the Majority also determined that Petitioner's narrative reason for separation should be changed to "Secretarial Authority" for the same reason to mitigate the likelihood of negative inferences being drawn from and to mitigate the stigma of Petitioner's naval service.

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 "General (under honorable conditions)"; that his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; and that his separation code was "JFF."

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

That no further corrective action be taken on Petitioner's naval record.

MINORITY CONCLUSION:

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

The Minority concurred with the Majority that there was no error or injustice in Petitioner's original discharge, and that his characterization was warranted by the nature and quantity of Petitioner's misconduct.

The Minority also considered the totality of the circumstances to determine whether relief was warranted in the interests of justice in accordance with reference (b). In this regard, the Minority disagreed with the Majority determination that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged. The Minority found Petitioner's misconduct to be significant. In particular, the Minority noted that one of Petitioner's UA resulted in his

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missing of his ship's movement, in addition to his drug abuse and communicating a threat. The Minority was also unpersuaded by Petitioner's contention that his service was otherwise honorable, as he received NJP early on in his Navy career for UA and drug use. Unlike the Majority, the Minority did not consider Petitioner's misconduct to be relatively minor. Accordingly, the Minority determined that Petitioner's OTH characterization of service, was, and remains, appropriate under the totality of the circumstances.

MINORITY RECOMMENDATION:

In view of the above, the Minority of 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.

9/13/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to General (Under Honorable Conditions); Change Narrative Reason for Separation to “Secretarial Authority”)

~~MINORITY Recommendation Approved (Deny Relief)~~

~~Petitioner's Request Approved (Full Relief – Upgrade to Honorable; Change Narrative Reason for Separation to “Secretarial Authority”)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]