



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

█  
Docket No. 4027-21  
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, █

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 1070/613, Administrative Remarks, 17 December 1985  
(4) NAVPERS 1070/607, Court Memorandum, 4 August 1986  
(5) NAVPERS 1070/613, Administrative Remarks, 31 August 1986  
(6) NAVPERS 1070/607, Court Memorandum, 28 July 1987  
(7) NAVPERS 1070/607, Court Memorandum, 11 August 1987  
(8) █ CO Memo 1910 █:01R, subj: Notice of an Administrative Board Procedure Proposed Action, 5 August 1987  
(9) Petitioner's Memo 1910 █/01R, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 5 August 1987  
(10) NAVPERS 1070/607, Court Memorandum, 25 August 1987  
(11) █ CO Memo 1910 █:01R, subj: Appointment of Administrative Board, 26 August 1987  
(12) █ Memo, subj: Processing of an Administrative Discharge Board in the case of [Petitioner], held On Board █ at 1400 Hours, 28 August 1987  
(13) █ CO Memo 1910 Ser █01R/608, subj: Recommendation for Separation by Reason of Misconduct due to Drug Abuse as Evidenced by Service Record, by Reason of Misconduct due to Commission of a Serious Military Offense as Evidenced by Service Record, and by Reason of Defective Enlistments and Inductions due to Fraudulent Entry into the Naval Service as Evidenced by Service and Medical Records, ICO [Petitioner], 28 September 1987  
(14) COMNAVMILPERSCOM Msg, subj: Misconduct Disch ICO [Petitioner], dtg 111917Z Nov 87

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, hereinafter referred to as the

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Board, requesting that his characterization of service be upgraded to general (under honorable conditions) or honorable.<sup>1</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 31 January 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. 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 evidence 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 review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 25 June 1984. See enclosure (2).

d. On 17 December 1985, Petitioner was counseled for unauthorized absence (UA) and for his military appearance. He was warned that he was establishing a record of minor disciplinary infractions and a pattern of misconduct, and advised that further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. See enclosure (3).

e. On 1 August 1986, Petitioner received nonjudicial punishment (NJP) for assault on a fellow service member in violation of Article 128, Uniform Code of Military Justice (UCMJ). See enclosure (4).

f. On 31 August 1986, Petitioner was again counseled for UA and a pattern of misconduct. He was again warned that he was establishing a record of minor disciplinary infractions and a pattern of misconduct, and advised that further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. See enclosure (5).

g. On 28 July 1987, Petitioner received his second NJP for UA from 17 June 1987 to 8 July 1987, in violation of Article 86, UCMJ; and for missing his ship's movement on 8 July 1987, in violation of Article 87, UCMJ. See enclosure (6).

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<sup>1</sup> Petitioner marked block 13 of enclosure (1) indicating that a traumatic brain injury (TBI) experience was related to his request, but when notified that he did not provide any documentation to support this claim and offered the opportunity to do so, he responded that this was a mistake and that he did not have TBI or a mental health condition.

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h. On 3 August 1987, Petitioner received his third NJP for failing to go to the restricted personnel muster in violation of Article 86, UCMJ; and for the wrongful use of marijuana in violation of Article 112a, UCMJ. See enclosure (7).

i. By memorandum dated 5 August 1987, Petitioner was notified that he was being considered for an administrative discharge from the Navy by reason of misconduct due to drug abuse and commission of a serious military offense, and by reason of defective enlistment due to his fraudulent entry into the Navy. See enclosure (8).

j. After consulting with counsel, Petitioner elected to exercise his right to request an administrative separation board on 11 August 1987. See enclosure (9).

k. On 24 August 1987, Petitioner received his fourth NJP for six specifications of failure to go to his appointed place of duty in violation of Article 86, UCMJ. See enclosure (10).

l. By memorandum dated 26 August 1987, Petitioner's commander appointed an administrative separation board to make findings of fact and recommendations regarding Petitioner's retention or separation and characterization of service. See enclosure (11).

m. On 28 August 1987, after hearing all of the evidence, the administrative separation board unanimously found insufficient evidence to support Petitioner's involuntary discharge for misconduct due to drug abuse and for defective enlistment due to fraudulent entry, and sufficient evidence support his involuntary discharge for misconduct due to commission of a serious military offense. Upon making this finding, the administrative separation board unanimously recommended that Petitioner be involuntarily separated from the Navy for misconduct due to commission of a serious military offense, and by a 2-1 vote that his service be characterized as other than honorable (OTH). See enclosure (12).

n. By memorandum dated 28 September 1987, Petitioner's commander forwarded Petitioner's administrative separation action to Naval Military Personnel Command (NMPC-83), concurring with the administrative separation board's finding that Petitioner committed misconduct due to commission of a serious military offense, but non-concurring with the finding of insufficient evidence that his committed misconduct due to drug abuse and/or defective enlistment due to fraudulent entry.<sup>2</sup> See enclosure (13).

o. By message dated 11 November 1987, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (14).

p. On 25 November 1987, Petitioner was discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (2).

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<sup>2</sup> In support of this contention, Petitioner's commander noted that Petitioner was found guilty of the wrongful use of marijuana in violation of Article 112a, UCMJ, at NJP; and that Petitioner had failed to disclose his hospitalization of psychological reasons during the enlistment process.

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q. Petitioner contends that he served well while working as an aviation storekeeper onboard the [REDACTED] for three years, but that he became discontented when his rate was changed from an aviation storekeeper to a regular supply storekeeper. As a result of this discontent, he went UA. He expressed his regret for his actions and attributes this irrationality to his youth. Petitioner requests forgiveness so that he can qualify for benefits from the Department of Veterans Affairs, and offered to complete community service work if it would help his cause. See enclosure (1).

#### 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 did not find any error or injustice in Petitioner's separation from the Navy under OTH conditions for misconduct due to commission of a serious offense. Petitioner was properly notified of his proposed separation and elected to exercise his right to an administrative separation board. The administrative separation board found insufficient evidence to support two of the three bases for separation of which Petitioner was notified, but unanimously found sufficient evidence of misconduct due to commission of a serious military offense and recommended that Petitioner be involuntarily separated from the Navy. The administrative separation board further recommended that Petitioner's separation be under OTH conditions. Petitioner's misconduct was such that an OTH discharge was warranted. Accordingly, there was no error or injustice in Petitioner's discharge under OTH conditions.

Despite finding no error or injustice in Petitioner's separation under OTH conditions for misconduct, the Majority considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered the circumstances under which Petitioner claims to have become discontented with the Navy; Petitioner's clear remorse for his actions and sincere apology; the letters of support provided by Petitioner attesting to his integrity and character; Petitioner's expressed willingness and desire to perform public service; the relatively minor nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these factors, the Majority determined that equitable relief is warranted in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions). Although not specifically requested by Petitioner, the Majority further determined that Petitioner's narrative reason for separation and associated entries on his DD Form 214 should be changed to "Secretarial Authority" in the interests of justice to minimize the potential for negative inferences being drawn from Petitioner's naval record in the future.

The Majority considered whether an upgrade of Petitioner's characterization of service to fully honorable was warranted in the interests of justice, but determined that the mitigating circumstances did not so significantly outweigh Petitioner's misconduct to justify such extraordinary relief. In this regard, the Majority noted that Petitioner's case for an upgrade of his characterization of service to fully honorable would have been more persuasive if he had

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provided evidence of public service to the community already performed rather than proposed as a basis for relief.

**MAJORITY RECOMMENDATION:**

In view of the above, the Majority of the Board recommends that the following corrections be made to 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 "Secretary Plenary Authority"; that his separation authority was "MILPERSMAN 3630900"; and that his separation code was "JFF."

That a copy of this record of proceedings be added to 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 the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.<sup>3</sup>

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge from the Navy under OTH conditions given the circumstances. It disagreed with the Majority conclusion, however, that relief was warranted in the interests of justice in accordance with reference (b). Given the fact that Petitioner had four separate NJPs for serious misconduct and that there was evidence of additional misconduct besides that disposed of through NJP, the Minority found that Petitioner's misconduct far outweighed the limited factors which might have weighed in favor of equitable relief. In this regard, the Minority agreed with the Majority conclusion that evidence of already completed public service would be far more persuasive than his stated desire to perform unspecified public service in the future. Accordingly, the Minority found no basis for relief in Petitioner's case.

**MINORITY RECOMMENDATION:**

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

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<sup>3</sup> In addition to finding that no relief was warranted in Petitioner's case, the Minority believed that Petitioner's narrative reason for separation should be changed to reflect "Misconduct due to a Pattern of Misconduct" to better match the circumstances of Petitioner's separation. Such a change to Petitioner's naval record, however, would create an error where one does not currently exist since Petitioner was never provided notice of a pattern of misconduct as a basis for separation. Accordingly, since Petitioner did not request such any such correction to his naval record, I have exercised my discretion as the Executive Director to remove this extraneous recommendation from this decision document. While it is within your discretion to make this change as recommended by the Minority member, I recommend that you refrain from doing so.

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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.

2/22/2022



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade characterization of service to “General (under honorable conditions)”; Change narrative reason for separation and associated entries on DD Form 214 to reflect “Secretarial Authority”)

MINORITY Recommendation Approved (Deny Relief)

Petitioner's Request Approved (Full Relief -- Upgrade characterization of service to “Honorable”; Change narrative reason for separation and associated entries on DD Form 214 to reflect “Secretarial Authority”)

3/25/2022

