



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

██████████
Docket No: 5757-21
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████ USN, ██████████

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo of 25 Aug 17 (Kurta Memo)
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) DD Form 214/215
(3) NAVPERS 1070/613, Administrative Remarks of 31 Oct 90
(4) NJP of 26 Jun 91
(5) NAVPERS 1070/607, Court Memorandum of 11 Oct 91
(6) NAVPERS 1070/607, Court Memorandum of 25 Jun 92
(7) Mental Health Advisory Opinion of 26 Nov 21
(8) Rebuttal Statement of 19 Jan 22

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 corrected to reflect honorable.

2. The Board reviewed Petitioner's allegations of error and injustice on 11 February 2022 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 references (b)-(c).

3. The Board, having reviewed all 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.

b. Petitioner enlisted in the Navy and began a period of active duty on 29 August 1990. See enclosure (2).

c. On 31 October 1990 Petitioner was selected for storekeeper Class "A" school through the top performer recruit training/apprenticeship training program. See enclosure (3).

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[REDACTED] USN, [REDACTED]

d. Petitioner received nonjudicial punishment (NJP) on 26 June 1991 for leaving his place of duty in violation of Article 86, Uniform Code of Military Justice (UCMJ). See enclosure (4).

e. On 11 October 1991 Petitioner was convicted by general court martial (GCM) of two specifications of insubordinate conduct toward a petty officer and forty-eight specifications of making, drawing, and uttering checks without sufficient funds in violation of Articles 91 and 123a, UCMJ. Petitioner was sentenced to confinement for ten months, forfeiture of \$600 pay per month for ten months, and discharge from the service with a bad conduct discharge (BCD). The convening authority's action indicated that forfeitures and allowances in excess of \$600 per month would be suspended provided Petitioner started an allotment or otherwise caused all non-forfeited pay and allowances to be paid directly to NFX/MWR [REDACTED] until the earlier of full repayment or his placement on appellate leave. See enclosure (5).

f. On 25 June 1992 Petitioner was released from confinement and processed for appellate leave. See enclosure (6).

g. Petitioner was discharged with a BCD on 14 May 1993. See enclosure (2).

h. Petitioner asserts he opened a bank account for the first time in [REDACTED] with \$200 and had never had a bank account before. He states he wrote numerous checks with the intention of repaying them but he became addicted to writing the checks while coping with depression. Petitioner contends his military counsel advised him to take a plea or he could spend twenty-two years in [REDACTED]. He states he was eighteen years old, afraid, and offered no counseling. He states he made full restitution and completed his time in the brig. He further states he takes responsibility and apologizes for his actions. Petitioner states he now has a family, maintains his accounts, works in the healthcare field, is a Deacon, and community volunteer. Petitioner states he would like to have a flag on his casket when he passes away and would like to volunteer for veterans organizations. See enclosure (1).

i. Petitioner's application and record were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. The AO noted in pertinent part that there was no in-service or post-service evidence of a mental health condition and that it is difficult to consider how financial mismanagement is attributed to depression. The AO concluded that there was insufficient evidence that the Petitioner incurred a mental health condition during military service, and there was insufficient evidence that his misconduct could be attributed to a mental health condition. See enclosure (7).

j. Petitioner submitted a rebuttal statement dated 19 January 2022. He asserted that many of the checks were for \$20 or less with a nonsufficient funds fee of \$50 per check. He states he bought food and small items, bought others things in an immature way of trying to make friends, sent some money to his mother, was coping with depression, and was taken advantage of by others when borrowing money in an effort to repay his debt. See enclosure (8).

k. In support of his application, Petitioner provided documentation and a personal statement indicating he is estimated to earn a Bachelor of Arts degree on 14 November 2022, has earned employment related awards, is a master level certified healthcare safety professional and

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instructor, volunteers at community safety events, has authored an earthquake safety book, has been married for twenty-seven years, and has two daughters in college and a son serving in the Marine Corps. See enclosure (1).

MAJORITY CONCLUSION

After 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.

Because Petitioner based his claim for relief in part upon a mental health condition, his application was reviewed in accordance with the guidance of reference (b). The Majority applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his basis for discharge. In this regard, the Majority substantially concurred with the AO and found no error or injustice in Petitioner's BCD characterization of service; this discharge was warranted by Petitioner's misconduct at the time of discharge.

In addition to applying liberal consideration to Petitioner's purported mental health condition and the effect that it may have had upon his 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 (c). In this regard, the Majority considered, among other factors, Petitioner's candor, remorse for his actions, youth and immaturity, non-violent nature of the misconduct, and the passage of time since Petitioner's discharge. In particular, the Board noted Petitioner's positive post-service conduct to include his educational pursuit, job history, and community volunteerism. Based upon this review, the Majority determined that the interests of justice warrant upgrading Petitioner's characterization of service to general (under honorable conditions) under the totality of the circumstances, as a grant of clemency.

MAJORITY RECOMMENDATION

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

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (Under Honorable Conditions)."

That no further corrective action should be taken.

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

MINORITY CONCLUSION

The Minority of the Board also applied liberal consideration to Petitioner's case, however, determined that the Petitioner's GCM conviction and misconduct were severe. The Minority further determined that a grant of clemency was not merited. The Minority commends Petitioner's post-service accomplishments and noted the mitigating factors but found that the

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mitigating circumstances did not so significantly outweigh the discharge as to warrant an upgrade of Petitioner's characterization of service.

MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that Petitioner be denied relief.

That no further corrective action be taken.

That a copy of this report of proceedings be filed in 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.

3/21/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board MINORITY Recommendation (Deny Relief)

Reviewed and Approved Board MAJORITY Recommendation (Partial Relief)

Reviewed and Approved Petitioner's Request (Grant Full Relief)

3/25/2022

[REDACTED]

[REDACTED]

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]