



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

██████████  
Docket No. 4163-22  
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 601-13, Administrative Remarks (starting on 15 March 1963)  
(4) NAVPERS 601-6, Court Memorandum, 25 January 1965  
(5) ██████████ Memo ██████████ 1900 Ser: 211, subj: Notification regarding proceedings to discharge by reason of unfitness due to frequent involvement of a discreditable nature with military authorities., 19 February 1965  
(6) Report of Field Board of Officers in the case of [Petitioner], undated  
(7) NAVPERS 601-13, Administrative Remarks (starting on 16 May 1965)  
(8) Commander ██████████ Special Court-Martial Order No. ██████████  
(9) NAVPERS 601-13, Administrative Remarks (starting on 14 January 1966)  
(10) Commander ██████████, Action of the Officer Exercising General Court-Martial Jurisdiction, ██████████  
(11) NAVPERS 601-9, Enlisted Performance Record  
(12) BCNR Letter 1: ██████████ ██████████

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 Board, requesting that his characterization of service be upgraded to honorable.

2. The Board reviewed Petitioner's allegations of error or injustice on 5 August 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).

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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 regulations within the Department of the Navy.

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

c. Petitioner enlisted in the Navy and began a period of active duty service on 23 November 1962. See enclosure (2).

d. On 15 March 1963, Petitioner commenced continuous sea duty onboard the ██████████  
██████████ See enclosure (3).

e. On 17 May 1963, Petitioner received nonjudicial punishment (NJP) for being absent from his place of duty in violation of Article 86, Uniform Code of Military Justice (UCMJ).<sup>1</sup> He received 20 days of extra duty, which was suspended for four months. See enclosure (3).

f. On 11 June 1963, Petitioner received his second NJP for being again absent from his place of duty in violation of Article 86, UCMJ.<sup>2</sup> He received 10 days of extra duty, and the suspension of his previously NJP was vacated. See enclosure (3).

g. On 10 July 1963, Petitioner received his third NJP for sleeping on watch in violation of Article 92, UCMJ. He was restricted to the ship for 15 days and received 15 days of extra duty. See enclosure (3).

h. On 24 August 1963, Petitioner received his fourth NJP for being derelict in the performance of his duties in violation of Article 134, UCMJ. He received 15 days of extra duty, which was suspended for three months. See enclosure (3).

i. On 6 November 1963, Petitioner's sea tour ended. See enclosure (3).

j. On 28 March 1964, Petitioner received his fifth NJP for unauthorized absence (UA) in violation of Article 86, UCMJ.<sup>3</sup> He was restricted to the limits of the ██████████  
██████████ for 10 days. See enclosure (3).

k. On 11 April 1964, Petitioner received his sixth NJP for failure to go to his appointed place of duty in violation of Article 86, UCMJ. He received five days of extra duty. See enclosure (3).

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<sup>1</sup> Petitioner was absent from his lookout watch on the bridge from 0800-1200 hours on 10 May 1963.

<sup>2</sup> Petitioner was absent from the quarterdeck to muster with the duty fire party on 7 June 1963.

<sup>3</sup> Petitioner was UA from 0000 hours to 0003 hours on 23 March 1964. He was essentially three minutes late for duty.

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l. On 15 April 1964, Petitioner received his seventh NJP for failure to obey an order or regulation in violation of Article 92, UCMJ. He was restricted for 10 days and received 10 days of extra duty. See enclosure (3).

m. On 11 June 1964, Petitioner was assigned a special evaluation mark of 2.0 for his military behavior trait due to his failure to pay acknowledged debts. See enclosure (3).

n. On 24 November 1964, Petitioner was assigned a mark of 2.8 for his military behavior trait for the period ending 16 November 1964, for being "sloppy and unseamanlike in his Military Behavior." The entry in his record also indicated that "[h]is high record of indebtedness indicates his lack of discipline." See enclosure (3).

o. On 25 January 1965, Petitioner was convicted by a summary court-martial for leaving his post before being regularly relieved in violation of Article 113, UCMJ. His sentence consisted of 20 days of restriction and the forfeiture of \$50.00 per month for one month. See enclosure (4).

p. By memorandum dated 19 February 1965, Petitioner was notified that he was being considered for administrative discharge by reason of unfitness due to frequent involvement of a discreditable nature with military authorities. See enclosure (5).

q. An administrative discharge board subsequently found that none of Petitioner minor offenses was considered to be discreditable, and that his difficulty in conforming with Navy discipline was due primarily to his youth and lack of previous experience in regimentation. The administrative discharge board also found that Petitioner's record of conformity is improving, and recommended that Petitioner be retained in the naval service. See enclosure (6).

p. On 4 May 1965, Petitioner received his eighth NJP for being absent from his appointed place of duty in violation of Article 86, UCMJ. He was restricted to the limits of the ship and received 15 days of extra duty. See enclosure (3).

q. On 16 May 1965, Petitioner was assigned a mark of 2.6 for his military behavior trait for the period ending 16 May 1965, due to frequent involvement of a discreditable nature with military authorities. See enclosure (7).

r. Petitioner was UA from 31 July 1965 until 5 August 1965, during which period he missed the sailing of his ship on 3 August 1965. See enclosure (7).

s. Petitioner was again UA on 6 August 1965. See enclosure (7).

t. On 4 October 1965, Petitioner was convicted, pursuant to his pleas, by a special court-martial (SPCM), of two specifications of UA in violation of Article 86, UCMJ,<sup>4</sup> and two specifications of missing movement of his ship through neglect in violation of Article 87,

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<sup>4</sup> Petitioner was charged and convicted of UA in violation of Article 86, UCMJ, for the periods from 31 July 1965 to 5 August 1965, and from 6 August 1965 to 18 August 1965.

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UCMJ.<sup>5</sup> He was sentenced to confinement at hard labor for three months, to be reduced to the grade of E-1, to forfeit \$78.00 per month for three months, and to a bad conduct discharge (BCD). See enclosure (8).

u. On 17 November 1965, the general court-martial convening authority approved the sentence of the SPCM as adjudged, but suspended the execution of the BCD for a period of six months. See enclosure (8).

v. On 14 January 1966, Petitioner received his ninth NJP for being UA from 31 December 1965 to 5 January 1966, in violation of Article 86, UCMJ. He was restricted to the limits of the ship and received extra duties for 30 days.<sup>6</sup> See enclosure (9).

w. On 3 February 1966, Petitioner received his tenth NJP for sleeping at his post, in violation of Article 113, UCMJ. He was received correctional custody on bread and water for one day. See enclosure (9).

x. On 4 February 1966, Petitioner received his eleventh NJP for reading while at his post as a lookout on the bridge, in violation of Article 113, UCMJ. He received correctional custody at hard labor for 30 days. See enclosure (9).

y. On 24 February 1966, the suspension of Petitioner's adjudged BCD was vacated. See enclosure (10).

z. On 14 March 1966, Petitioner was discharged under other than honorable conditions. See enclosure (2). His final overall trait average was 2.82. See enclosure (11).

aa. On 29 May 1985, the Board denied Petitioner's request to upgrade his discharge in Docket No. 1504-85. This decision was memorialized and approved by letter dated 12 June 1985. See enclosure (12).

bb. Petitioner requested an upgrade to his characterization of service due to the circumstances surrounding his discharge. He asserts that there were many factors which contributed to his discharge, including unjust practices. Specifically, he felt that he was unfairly targeted and received sanctions disproportionate to his offenses due to certain isolated incidents. He also claims to have been "misabeled and mishandled." Petitioner submitted with this application his application for benefits to the Department of Veterans Affairs (VA). In his VA benefits application, Petitioner stated that he was unfairly targeted when he was unjustly labeled as a "black nationalist" after only attempting to volunteer to play music while on liberty. He claimed that he "was young and unaware of what was being organized – [he] simply wanted to

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<sup>5</sup> Petitioner was charged and convicted of missing movement in violation of Article 87, UCMJ, on 3 August 1965 and 6 August 1965. He was also charged with missing movement twice on 9 August 1965 and once on 16 August 1965, but the former was dismissed on motion of the defense on the ground that this was not a significant movement while the latter was withdrawn by order of the convening authority after pleas but prior to the introduction of evidence.

<sup>6</sup> It appears that Petitioner may have been reassigned to the ██████████ ██████████ presumably upon completion of his SPCM sentence to confinement at hard labor.

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play records.”<sup>7</sup> After being so labeled, he claims to have been grouped with other individuals on the ship who were conspiring and he was thereafter treated differently. Petitioner claimed to have lived for many years with the shame and embarrassment of his BCD, and that he has suffered both mentally and physically as a result. Included with his application were numerous letters of support attesting to Petitioner’s favorable character, contributions to and reputation within his community, family values, and strong work ethic. Among these statements are references to an incident Petitioner has spoken of from his time in the Navy when he was pulled down a set of stairs, from which he claimed to still get headaches. Also included was evidence of many years of volunteer work with Catholic Charities. See enclosure (1).

#### 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 interest of justice.

The Majority found no error or injustice in Petitioner’s BCD under the circumstances. After receiving NJP on eight separate occasions for minor offenses, Petitioner survived an administrative separation board and therefore was provided the opportunity to improve his conduct. He responded by going UA twice and missing movement of his ship on each occasion. He pled guilty to these offenses at his SPCM, so proof of these offenses was not in question. These offenses alone were sufficient to justify the punishment imposed by the SPCM, but when combined with his numerous NJPs the adjudged BCD was entirely appropriate. Even so, Petitioner was provided yet another opportunity to improve his conduct when the BCD was suspended, but he again wasted that opportunity by almost immediately engaging in further misconduct onboard a different ship. Petitioner claimed that he was targeted and that his punishment was disproportionate to his misconduct, but with one exception that is not reflected in the record.<sup>8</sup> Instead, the record reflects that Petitioner’s command was extraordinarily patient with Petitioner’s youthful indiscretions and gave him numerous opportunities to overcome his immaturity and indiscipline. Petitioner simply failed to avail himself of these many opportunities.

In addition to reviewing the circumstances of Petitioner’s discharge at the time, the Majority also considered the totality of the circumstances to determine whether clemency is warranted in the interest of justice in accordance with reference (b). In this regard, the Board considered, among other factors, that Petitioner’s individual acts of misconduct, while numerous, were relatively minor and nonviolent in nature; Petitioner’s volunteer service during a time of war and participation in expeditionary missions; Petitioner’s post-service contributions to society and reputation in his community, as reflected in the numerous character references provided with his application; Petitioner’s documented post-service volunteer service in his community; Petitioner’s relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner’s discharge. Based upon these considerations, the Majority determined that clemency is warranted. Specifically, the Majority determined that Petitioner’s characterization of service should be upgraded to general (under honorable conditions). While the Majority

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<sup>7</sup> The context of this incident is not clear from Petitioner’s statement.

<sup>8</sup> The Majority did find Petitioner’s punishment at his final NJP, for reading at his post, to be disproportionate to the offense. See paragraph 3x above.

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determined that some clemency was warranted, it did not find an upgrade of Petitioner's characterization of service to fully honorable to be warranted due to the frequency and nature of Petitioner's in-service misconduct. The factors which justified the clemency awarded by the Majority did not so significantly outweigh Petitioner's misconduct so as to warrant the extraordinary relief requested.

**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:

That Petitioner be issued a new DD Form 214, reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for Petitioner's discharge was "Other good and sufficient reasons (non-derogatory) when determined by proper authority"; that his separation authority was "BUPERS Manual Art. C-10306"; and that his separation code was "21L."

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 determination that there was no error or injustice in Petitioner's BCD under the circumstances. Considering how many opportunities that Petitioner was provided to improve his conduct, the Minority believed his BCD to be more that warranted under the circumstances.

The Minority did not agree with the Majority, however, that clemency was warranted in the interests of justice. The Minority considered the same potentially mitigating factors as did the Majority in accordance with reference (b), but believed that the volume and nature of Petitioner's misconduct, despite the numerous opportunities that he was provided to improve his conduct, significantly outweighed all of the factors which may warrant clemency. Accordingly, the Minority determined that clemency was not warranted 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.

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5. The foregoing action of the Board is submitted for your review and action.

9/21/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – I direct the relief reflected in the Majority recommendation above.)

MINORITY Recommendation Approved (Deny Relief)

MAJORITY Recommendation Partially Approved (Partial Relief – I agree with the Majority determination that clemency is warranted in the form of an upgrade to Petitioner’s characterization of service to “General (under honorable conditions),” but do not believe that a change to his narrative reason for separation, separation authority, or separation code is warranted under the circumstances. Petitioner’s punitive discharge was warranted under the circumstances, and the mitigating circumstances are not sufficient to warrant the deletion of those entries in Petitioner’s naval record. Accordingly, I direct the relief recommended by the Majority above, except for that part extending to changes to Petitioner’s narrative reason for separation, separation authority, and separation code.)

Petitioner’s Request Approved (Full Relief – I agree with the Majority determination that clemency is warranted based upon the totality of the circumstances, but do not believe that the relief recommended by the Majority goes far enough. Specifically, I believe that the mitigating circumstances so significantly outweigh Petitioner’s minor misconduct that an upgrade of his characterization of service to fully honorable is warranted. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s characterization of service should be changed to “Honorable.” Petitioner should also be issued an Honorable Discharge Certificate.)

10/11/2022

[REDACTED]

Assistant General Counsel (M&RA)

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