



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

█
Docket No: 6469-22
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, 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 with attachments
(2) DD Form 1966, Record of Military Processing – Armed Forces of the United States, 28 October 2002
(3) DD Form 214
(4) NAVPERS 1070/604, Awards
(5) NAVPERS 1070/607, Court Memorandum, 13 August 2005
(6) NAVPERS 1910/31, Administrative Separation Processing Notice – Administrative Board Procedure, 13 August 2005
(7) █ CO Memo 1910 Ser 13A/298, subj: [Petitioner], Recommendation for Administrative Separation, 15 August 2005
(8) Department of Veterans Affairs Letter 330/DJJ, 14 June 2022

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 her characterization of service be upgraded.

2. The Board reviewed Petitioner's allegations of error or injustice on 26 September 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on her naval record. Documentary material considered by the Board included 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 regulations 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 interest of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. On 10 May 2002, Petitioner was granted a waiver to enlist in the Navy after testing positive for the use of marijuana. See enclosure (2).

d. On 29 October 2002, Petitioner began a period of active duty service in the Navy pursuant to her above referenced enlistment. See enclosure (3).

e. On 3 August 2005, Petitioner received a Good Conduct Medal. See enclosure (4)

f. On 13 August 2005, Petitioner received nonjudicial punishment (NJP) for the wrongful use of marijuana in violation of Article 112a, Uniform Code of Military Justice (UCMJ).¹ She received 45 days of restriction and extra duty, forfeiture of \$743 per month for two months, and was reduced to the grade of E-2. See enclosure (5).

g. On 13 August 2005, Petitioner was notified that she was being processed for administrative separation by reason of misconduct due to drug abuse. See enclosure (6).

h. On 14 August 2005, Petitioner acknowledged receipt of the above referenced notice of administrative separation, and waived her right to consult with counsel and to request an administrative separation board. See enclosure (6).

i. By memorandum dated 15 August 2005, Petitioner's commander recommended that Petitioner be involuntarily separated from the Navy under other than honorable (OTH) conditions for misconduct due to drug abuse. The only offense or conduct referenced on this recommendation was the marijuana use for which Petitioner received NJP. See enclosure (7).

j. On 20 September 2005, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (3).

k. By letter dated 14 June 2022, the Department of Veterans Affairs (VA) informed Petitioner that it had determined the entirety of Petitioner's military service to be honorable for VA purposes, and that she was therefore eligible for VA benefits for this service. See enclosure (8).

l. Petitioner contends she was wrongfully given an OTH discharge due to "a one time incident [that] was not a direct result of bad conduct." She further asserts that her service was otherwise honest, faithful, and meritorious, and that was recognized as "Sailor of the Day" on her ship on the day before she was discharged. See enclosure (1).

¹ Enclosure (4) reflects that Petitioner was charged with "wrongful use, possession, etc., of controlled substances" in violation of Article 112a, UCMJ. Since drug abuse was the only basis for her subsequent administrative separation, the Board presumes that marijuana use was the only offense actually charged.

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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 interest of justice.

The Majority found no error in Petitioner's discharge for misconduct due to drug abuse under OTH conditions. There was no evidence calling into question the legitimacy of the drug use charge against Petitioner, and that charge was sufficient to warrant an OTH discharge. There was also no evidence to suggest that Petitioner's administrative separation was improperly processed, as she was notified of the action and knowingly waived her rights this regard.

In addition to reviewing the circumstances of Petitioner's discharge at the time that it was administered, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (b). In this regard, the Board considered the extremely minor nature of the misconduct for which Petitioner was discharged; that the single instance of drug use appears to be the only blemish on Petitioner's naval record, as reflected by her receipt of a Good Conduct Medal shortly before receiving NJP; Petitioner's assertion that she was recognized as the Sailor of the Day" for her ship; that Petitioner's naval record reflects that she was generally a capable and good Sailor throughout her career; Petitioner's relative youth and immaturity at the time of her misconduct; and the passage of time since Petitioner's discharge. In particular, the Majority noted that the perceived severity of marijuana use has softened since Petitioner's discharge, and that she would likely would not be separated under OTH conditions under similar circumstances today. Based upon the totality of the circumstances, the Majority determined that an upgrade of Petitioner's characterization of service to general (under honorable conditions) is warranted in the interest of justice. The Majority found that this is the characterization of her service that would likely be assigned to Petitioner under similar circumstances today.

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 her service was characterized as "General (under honorable conditions)."

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.

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The Minority concurred with the Majority conclusion that there was no error in Petitioner's discharge under OTH conditions for drug abuse at the time. Petitioner's misconduct was not in question, it was sufficiently severe to warrant an involuntary discharge under OTH conditions, and it was properly processed.

The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (b), but reached a different conclusion than did the Majority in this regard. The Minority considered the same potentially mitigating factors as did the Majority, but simply found that they were not sufficient to warrant the extraordinary relief requested by Petitioner. As Petitioner had already received a waiver to enlist after testing positive for marijuana use, she was already serving pursuant to a second chance granted by the Navy and was on notice that her conduct would be under scrutiny. Despite being provided this opportunity, she used the same illegal substance for which she received an enlistment waiver. Further, Petitioner provided the Board no evidence of her post-service accomplishments or contributions to society to demonstrate her rehabilitation or worthiness for the equitable relief that she seeks. Her claim that her discharge was "not a direct result of bad conduct" when she admitted to testing positive raised doubts regarding her rehabilitation for the Minority. Accordingly, the Minority did not believe that relief was warranted in the interest of justice based upon 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.

11/9/2022

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

 X MAJORITY Recommendation Approved (Grant Relief – I concur with the findings of the Majority and direct the relief recommended by the Majority above.)

____ MAJORITY Recommendation Approved (as modified) (Grant Relief – I concur with the findings of the Majority, but believe that additional relief than that recommended is warranted in the interest of justice. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s characterization of service shall be changed to “Honorable.” Petitioner is also to be issued an Honorable Discharge certificate.

____ MINORITY Recommendation Approved (Deny Relief – I concur with the findings of the Minority and therefore disapprove Petitioner’s request for relief.)

11/22/2022

[REDACTED]

[REDACTED]
Assistant General Counsel (M&RA)

Signed by: [REDACTED]