



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

██████████
Docket No. 9077-22
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 (P&R) Memo, “Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment,” 25 August 2017
(c) USD (P&R) 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 1966, Record of Military Processing – Armed Forces of the United States, 26 July 1996
(3) DD Form 214
(4) NAVPERS 1070/601, Immediate Reenlistment Contract, 18 October 1995
(5) ██████████ Court Memorandum, 3 February 1996
(6) ██████████, Court Memorandum, 20 May 1996
(7) ██████████ CO Memo 1910 Ser 14, subj: Notice of an Administrative Board Procedure Proposed Action, 23 May 1996
(8) Petitioner’s Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 21 May 1996
(9) ██████████ CO Memo 1910 Ser 014/, subj: [Petitioner], Recommendation for Administrative Separation by Reason of Alcohol Abuse Rehabilitation Failure and by Misconduct due to Commission of a Serious Offense, undated
(10) BUPERS Message, subj: Admin Discharge ICO [Petitioner], dtg 101841Z JUL 96
(11) BCNR Memo Docket No: NR20220009077, subj: Advisory Opinion ICO [Petitioner], 2 May 2023

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 9 June 2023 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 included the

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enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) and (c).

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. Petitioner's personal appearance, with or without counsel, would not materially add to the Board's understanding of the issues involved. Accordingly, Petitioner's personal appearance was not necessary and the Board considered Petitioner's request based on the evidence of record.

c. On 27 March 1990, Petitioner was granted an enlistment waiver for pre-service citations for drinking in public and driving under the influence of alcohol (DUI).¹ See enclosure (2).

d. On 23 May 1990, Petitioner began a period of active duty service in the Navy. See enclosure (3).

e. On 18 October 1995, Petitioner reenlisted in the Navy for a period of three years.² See enclosure (4).

f. On 2 February 1996, Petitioner received non-judicial punishment (NJP) for two specifications of being absent from his place of duty, in violation of Article 86, Uniform Code of Military Justice (UCMJ);³ and operating a vehicle while drunk, in violation of Article 111, UCMJ.⁴ He received a written reprimand, was restricted and required to perform extra duties for 45 days, required to forfeit \$300 pay per month for two months, and reduced in grade. See enclosure (5).

g. On 20 May 1996, Petitioner received his second NJP for failing to obey a lawful general order, in violation of Article 92, UCMJ;⁵ operating a vehicle while drunk, in violation of Article 111, UCMJ;⁶ and being incapacitated for the proper performance of duty as a result of previous overindulgence in intoxicating liquor, in violation of Article 134, UCMJ.⁷ He was restricted and required to perform extra duties for 45 days, required to forfeit \$100 pay per month for two months, and reduced in grade. See enclosure (6).

¹ These arrests occurred on 1 April 1989 and 22 December 1989 respectively. Petitioner reported that the DUI arrest occurred after he had been drinking at a holiday party, and he failed both a field sobriety and a blood alcohol test. He was fined \$190 and his driver's license was revoked for six months. He also reported that the drinking in public citation occurred with he was drinking a beer while fishing off of a public bridge.

² This reenlistment extended Petitioner's end of active obligated service date to 18 October 1998. Per enclosure (3), Petitioner honorably completed his first enlistment from 23 May 1990 to 17 October 1995.

³ Petitioner was alleged to have been absent from the [REDACTED] from 1-2 January 1996, and from the [REDACTED] from 0645 to 2100 on 19 January 1996.

⁴ This incident was alleged to have occurred on 18 January 1996.

⁵ Petitioner was alleged to have violated the requirement of OPNAVINST 312.32B to report being charged with a civil offense to his chain of command.

⁶ This incident was alleged to have occurred on 24 April 1996.

⁷ This incident was alleged to have occurred on 12 May 1996.

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h. By memorandum dated 20 May 1996, Petitioner was notified that he was being considered for administrative separation by reason of alcohol abuse rehabilitation failure, as evidenced by his inability to successfully complete a Level III rehabilitation treatment program, and for misconduct due to commission of a serious offense, as evidenced by the above referenced NJPs. See enclosure (7).

i. By memorandum dated 21 May 1996, Petitioner waived his right to consult with counsel and all other rights pertaining to the administrative separation process. He specifically indicated that he did not object to his administrative separation. See enclosure (8).

j. By undated memorandum, Petitioner's commander recommended that Petitioner be administratively separated from the Navy as soon as possible under other than honorable (OTH) conditions based upon his "continuing misconduct and his diagnosed alcohol problem."⁸ See enclosure (9).

k. By message dated 10 July 1996, the separation authority directed Petitioner's administrative discharge under OTH conditions for misconduct. See enclosure (10).

l. On 25 July 1996, Petitioner was discharged from the Navy under OTH conditions for misconduct. See enclosure (3).

m. Petitioner contends that he suffers from alcoholism, the impact of which became worse during and after his voluntary visit with the drug and alcohol program advisor onboard the [REDACTED] and his placement into a residential alcohol recovery center.⁹ He asserts that his alcoholism was the root cause of all of his misconduct, but claims that he has been sober since 8 June 2001. He also claims that he is a new person and a contributing member of society. In support of his application, Petitioner provided two character references, attesting to his continuous sobriety and regular participation in Alcoholics Anonymous (AA); his post-service record of employment and work ethic; and responsibility for the care of his autistic brother. See enclosure (1).

n. Petitioner's application and records were reviewed by a licensed clinical psychologist, who provided an advisory opinion (AO) for the Board's consideration. The AO found no evidence of any PTSD condition, but did find that Petitioner's diagnosis with alcohol abuse disorder was based upon observed behaviors and performance during his service, and that his in-service conduct was consistent with this condition. However, the AO also found that this behavior appears to predate his service in the Navy. Accordingly, the AO found insufficient evidence of any mental health condition attributable to Petitioner's military service, but did find that Petitioner's misconduct could be attributed to his diagnosed alcohol abuse disorder. See enclosure (11).

⁸ Contrary to the charged violation of Article 92, UCMJ, during his 20 May 1996 NJP (see paragraph 3g above), enclosure (9) stated that Petitioner had no known involvement with civil authorities.

⁹ Petitioner indicated in block 13 of his DD Form 149 that his application was related to post-traumatic stress disorder (PTSD). However, he provide no evidence or narrative regarding this condition, focusing instead only upon his alcohol addiction.

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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 partial equitable relief is warranted in the interest of justice.

The Majority found no error or injustice in Petitioner's discharge at the time that it was administered. Petitioner's misconduct was well documented and its validity is not in question. It was also more than sufficient to justify Petitioner's administrative separation under OTH conditions for misconduct due to commission of a serious offense. Both of Petitioner's NJP included at least one offense for which a punitive discharge was an authorized punishment, so several of his acts of misconduct met the threshold of a "serious offense" to permit separation on this basis. Finally, Petitioner was properly notified of the proposed action, and made a knowing waiver of his rights in this regard. The Majority notes that Petitioner's command was aware of his diagnosis of alcohol abuse disorder, and factored the existence of this condition into its decision. Even with knowledge of the alcohol abuse disorder diagnosis, the command determined that an OTH characterization of service was warranted given his continuing misconduct. The Majority found no error or injustice in this determination.

Because he checked the box in block 13 of his DD Form 149 indicating that PTSD was related to his request, the Majority reviewed this aspect of Petitioner's claim in accordance with the guidance of reference (b). Accordingly, the Majority applied liberal consideration to this claim and to the effect that such a condition may have had upon his conduct. Even applying liberal consideration, however, the Majority found insufficient evidence of PTSD. Considering that Petitioner did not mention PTSD in his narrative, and provided no other clinical evidence to support the existence of such a condition, the Majority presumed that Petitioner either mistakenly checked the PTSD box in block 13, or checked it in an effort to enhance his claim for liberal consideration for alcohol abuse disorder. In any case, the Majority found insufficient evidence of any PTSD condition which might have excused or mitigated Petitioner's misconduct.

The Majority determined that liberal consideration is not applicable to Petitioner's claimed alcohol abuse disorder. Per paragraph 15 of the attachment to reference (b), "[l]iberal consideration is not required for cases involving pre-existing conditions which are determined not to have been aggravated by military service." Petitioner entered the Navy pursuant to a waiver for two separate pre-service alcohol-related incidents. Accordingly, his alcohol abuse clearly predated his naval service, and there is no evidence that it was aggravated by that service. However, the Majority did not need to apply liberal consideration to conclude that Petitioner suffered from alcohol abuse disorder while in the naval service. He was diagnosed with and was provided Level III residential rehabilitation treatment for this condition, and was processed for separation as a rehabilitation failure. Further, his command noted this diagnosis in its recommendation that Petitioner be discharged under OTH conditions. While the Majority recognizes that much, if not all of Petitioner's misconduct, was attributable to Petitioner's alcohol abuse disorder, it found that this condition had only a minimal mitigating effect on this misconduct. The alcohol abuse essentially was his misconduct. Petitioner was afforded rehabilitation treatment, but failed to comply with its requirements. Further, Petitioner's condition was known and factored into consideration of Petitioner's discharge and characterization of service at the time it was administered. As such, this condition was not like PTSD, which often provides an explanation for misconduct which was not previously known.

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As such, the Majority found this condition to have minimal mitigating effect upon Petitioner's misconduct, as any such mitigation would have already been factored into the command's decision.

In addition to considering Petitioner's application in accordance with the guidance of reference (b), the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Majority considered, among other factors, the mitigating effect of Petitioner's alcohol abuse disorder, however limited as discussed above; the entirety of Petitioner's naval career, which included the fact that he completed his first enlistment honorably and was awarded at least one Good Conduct Medal; Petitioner's active and continuous post-service rehabilitation efforts, as evidenced by his continuing affiliation and active participation with AA; Petitioner's post-service record of sobriety and employment, suggesting significant rehabilitation from the misconduct that warranted his OTH discharge; the character references provided with Petitioner's application, attesting to his work ethic, sobriety, and contributions to society; the non-violent nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. Having determined that these mitigating circumstances outweigh the severity of Petitioner's in-service misconduct, and that no useful purpose is served by continuing to stigmatize Petitioner for conduct which occurred so long ago, the Majority found that an equitable upgrade of Petitioner's characterization of service to general (under honorable conditions) is warranted in the interests of justice.

While the Majority found that the mitigating circumstances sufficiently outweighed the severity of Petitioner's misconduct to justify an upgrade of his characterization of service to general (under honorable conditions), it did not find those mitigating circumstances to so significantly outweigh that misconduct to justify the extraordinary relief of an upgrade to fully honorable as he requested. In this regard, the Majority noted that some of Petitioner's misconduct was quite severe, endangering an untold number of innocent bystanders, and that he was a repeat offender for this type of misconduct. Additionally, the nature of some of Petitioner's charged misconduct suggests that there was other misconduct disposed of by civilian authorities during his naval service, which Petitioner failed to report to his chain of command. Finally, the Majority considered the fact that Petitioner was provided Level III residential treatment for his alcohol abuse disorder, but failed to comply with its requirements. Accordingly, the Majority did not believe that the specific, extraordinary relief requested by the Petitioner was warranted in the interests of justice.

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 interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 26 July 1996 was characterized as "General (under honorable conditions)." All other entries on his DD Form 214 are to remain unchanged.

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

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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 material error or injustice warranting relief.

The Minority concurred with the Majority conclusions in all regards, except with regard to the weight of the mitigating circumstances relative to the severity of the misconduct for which Petitioner was discharged. Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (c), and considered the same potentially mitigating factors in this regard as did the Majority. However, the Minority assigned more weight than did the Majority to the fact that Petitioner's problematic alcohol abuse predated his service, and that he failed to avail himself of the residential treatment provided by the Navy. The Minority also noted that alcohol abuse does not cause one to engage in misconduct. Its effects certainly lower inhibitions and impairs judgment, but it does not cause one to get behind the wheel of a vehicle to endanger innocent bystanders. Thousands of alcoholics deal with their demons without such callous disregard for others every day, while such callous disregard for others was a pre-existing condition which carried over into his naval service in Petitioner's case. As such, the Minority assigned significantly more weight to the severity of Petitioner's misconduct than did the Majority, and simply did not believe that the mitigating circumstances came close to the weight of that misconduct. Rather, the Minority believed that Petitioner's characterization of service was, and remains, appropriate given 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.

7/5/2023

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

MINORITY Recommendation Approved (Relief Denied – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

8/15/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]