



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

█
Docket No. 5447-23
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, "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 enclosures
(2) DD Form 214
(3) P601-6R, █, Report of Unauthorized Absence, 10 August 1982
(4) P601-7R, █, Court Memorandum, 18 March 1983
(5) █ Msg, subj: [Petitioner], Recommendation for Admin Discharge by Reason of Misconduct for Drug Abuse, dtg 272005Z Jun 83
(6) COMNAVMILPERSCOM Msg, subj: Misconduct Discharge ICO [Petitioner], dtg 021705Z Jul 83
(7) Department of Veterans Affairs Administrative Decision, 7 April 2008
(8) Department of Veterans Affairs Amended Administrative Decision, undated (with hearing transcript, dated 23 January 2020)
(9) BCNR Letter bdb Docket No: 4432-20, 17 December 2020

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.¹

2. The Board considered Petitioner's allegations of error or injustice on 28 August 2023 and, pursuant to its governing policies and procedures, determined that equitable relief is warranted in the interests of justice. 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. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

¹ Petitioner did not specify the relief that he sought. Accordingly, the Board presumed that he is seeking a discharge upgrade. As such, this application constitutes a request for reconsideration of the Board's denial of Petitioner's previous request to upgrade his characterization of service to general (under honorable conditions) in Docket No. 4432-20.

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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 interests 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 4 January 1982. See enclosure (2).

d. Petitioner was in an unauthorized absence status (UA) for approximately 24 hours from 8 August 1982 to 9 August 1982. See enclosure (3).

e. On 16 March 1983, Petitioner received nonjudicial punishment (NJP) for wrongful use of a controlled substance in violation of Article 134, Uniform Code of Military Justice (UCMJ).² He was reduced in rate; required to perform 45 days of extra duty; and required to forfeit \$286.80 pay per month for two months. See enclosure (4).

f. On 23 June 1983, Petitioner received his second NJP for wrongful use of a controlled substance in violation of Article 134, UCMJ. He was again reduced in rate, required to perform 45 days of extra duty; and to forfeit one-half month's pay for two months. See enclosure (5).

g. On 23 June 1983, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, as evidenced by his NJPs. See enclosure (5).

h. On 27 June 1983, Petitioner waived his right to consult with counsel and to request an administrative discharge board. See enclosure (5).

i. On 27 June 1983, Petitioner's commander recommended that Petitioner be administratively discharged from the Navy under other than honorable (OTH) conditions for misconduct due to drug abuse. In making this recommendation, Petitioner's commander stated that Petitioner's drug infractions "are only an extension [sic] of his lack of respect for Navy regulations." He also stated that "the situation has reached the point to where [Petitioner] is a threat to good order and discipline in the ship." See enclosure (5).

j. On 2 July 1983, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (6).

k. On 8 July 1983, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (2).

l. On 7 April 2008, the Department of Veterans Affairs (VA) denied Petitioner's claim for benefits, finding that his service was OTH for VA purposes. See enclosure (7).

² Petitioner suggests elsewhere in the record that the controlled substance was marijuana.

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m. On 13 January 2020, Petitioner was granted a hearing on another claim for VA benefits. This request was ultimately denied, and his service was characterized as dishonorable for VA purposes.³⁴ See enclosure (8).

n. On 2 November 2020, the Board denied Petitioner's previous request for relief in Docket No. 4432-20. Petitioner had asserted in that request that he made bad choices and was very immature when he committed the misconduct resulting in his discharge. He also claimed to have been an excellent Sailor, and claims that he was not offered any support or assistance in dealing with substance abuse issues which could have changed things for him. Finally, Petitioner stated that he was a highly valued team member at his current job, is a licensed and ordained minister and the Pastor of a church in his home town, and a proud husband and father and well-respected member of his community. He also served as the chaplain at the county jail, and volunteers his time to work with people who are struggling to get off of drugs. See enclosure (9).

o. Petitioner's application consists of four character references from friends and colleagues.⁵ These letters reveal that Petitioner serves his community as church pastor and volunteers his time to minister to prisoners and the less fortunate. They also attest to his character, volunteer service and charitable efforts, favorable reputation in the community, and law abiding nature. See enclosure (1).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that 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. There appears to be no controversy regarding the legitimacy of Petitioner's two instances of drug use, as Petitioner admitted to the drug use during the VA hearing referenced in paragraph 3m above and does not deny it within either of his applications. Additionally, it appears that Petitioner was afforded all process due to him in the discharge process. He was formally notified of the initiation of administrative discharge proceedings and informed of his rights with regard to that process, but voluntarily waived his rights in that regard. Finally, each of Petitioner's drug offenses carried maximum punishments exceeding six months of confinement and/or a punitive discharge, so his misconduct was of sufficient severity to justify his OTH discharge. Accordingly, there was no error or injustice in Petitioner's discharge at the time that it was administered.

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 interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, the character references provided by

³ The VA hearing officer encouraged Petitioner to seek a discharge upgrade from the Navy in order to obtain his desired VA benefits.

⁴ The VA's summary of Petitioner's military offenses in its administrative decision document omitted Petitioner's second NJP for drug use.

⁵ Three of these four character references were provided to the Board with Petitioner's previous application for relief. The new character reference appears to be from a member of his church.

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Petitioner with his application; Petitioner's religious support and volunteer service in his community, as reflected in the character references; the diminished perceived severity of marijuana use relative to the time of Petitioner's use in 1983; the non-violent and relative 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. The Majority determined that the combined weight of these mitigating factors sufficiently outweighed Petitioner's relatively minor misconduct to warrant equitable relief in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be equitably upgraded to general (under honorable conditions).

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 ending on 8 July 1983 was characterized as "General (under honorable conditions)." All other entries currently reflected on Petitioner's DD Form 214 are to remain unchanged.

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 conclusion that there was no error or injustice in Petitioner's discharge at the time that it was administered.

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 (b). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority. However, the Minority reached a different conclusion than did the Majority. Specifically, the Minority found that Petitioner simply did not provide the Board with sufficient reason to grant the relief he seeks. He put virtually no effort into his application. In fact, the only new information provided with his current application that was not previously considered when the Board denied his request for relief in Docket No 4432-20 was a one-paragraph letter provided by someone who did not even establish her relationship to Petitioner. This simply was not sufficient new information to justify changing the Board's previous denial of his request. As there was no error or injustice in Petitioner's discharge at the time that it was administered, it is his burden to demonstrate to the Board that his post-service accomplishments and contributions to society are so noteworthy that they justify recharacterizing what was, in fact, OTH service.

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As Petitioner made minimal effort in this regard, the Minority did not believe that equitable relief is warranted in the interests of justice.

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.

10/20/2023

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

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

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

10/27/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]