



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

[REDACTED]
Docket No. 5987-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED], USN, XXX-XX-[REDACTED]

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 w/attachments
(2) DD Form 214, Certificate of Release or Discharge from Active Duty
(3) Record of Unauthorized Absence (UA)
(4) Summary Court Martial, 2 Aug 91
(5) Notice of an Administrative Board Procedure Proposed Action, 2 Aug 91
(6) Statement of Awareness and Request for or Waiver of Privileges, 2 Aug 91
(7) Naval Message, Separation Authority Decision, 27 Aug 91

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 an upgraded to his characterization of service to receive Department of Veterans Affairs health benefits.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 29 September 2023. The names and votes of the panel members will be furnished upon request. Petitioner's allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include reference (b).

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Petitioner enlisted in the Navy and commenced a period of active duty on 24 July 1990. Enclosed (2).

b. Petitioner started a period of unauthorized absence (UA) on 11 May 1991 and was declared as deserter until he surrendered to civilian authorities on 14 July 1991. Enclosure (3).

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c. On 2 August 1991, Petitioner was convicted at a Summary Court Martial (SCM) under Article 86, Uniform Code of Military Justice for his UA status from 11 May 1991 through 14 July 1991, and Article 87 for missing ship's movement during his UA status. Petitioner was sentenced to reduction in rank, forfeiture of pay, and confinement. Enclosure (4).

d. 2 August 1991, Petitioner was notified of the proposed administrative separation procedures, and that he is being considered for an administrative discharge from the naval service by reason of misconduct due to the commission of a serious offense as evidenced by his SCM conviction, and if approved, his characterization of service may be under other than honorable (OTH) conditions. Upon receipt of this notification, Petitioner waived his rights and did not object to the proposed separation. Enclosures (5) and (6).

e. On 27 August 1991, the separation authority directed that Petitioner be administratively discharged from the Navy with a characterization of service as under OTH conditions by reason of misconduct—commission of a serious offense. Subsequently, Petitioner was discharge as directed on 29 August 1991. Enclosures (2) and (7).

f. In Petitioner's application, he explains in part prior to his entry on active duty his mother passed away which left him responsible to care for his three younger siblings. He joined the Navy to gain a career and to receive good benefits for his siblings. Petitioner further explains in his attempt to add his siblings as dependents, he was faced with disputing his aunt to gain custody. He claims that he went "Absent Without Leave" to try and get legal guardianship of his siblings. Petitioner takes full responsibility for his mistakes and apologized for his actions. He describes the accomplishments of his siblings due to his sacrifice and provided letters of support as part of his application. Enclosure (1).

MAJORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board Majority determined that equitable relief is warranted in the interests of justice.

The Majority found no error or injustice in Petitioner's discharge under OTH conditions at the time that it was administered. The legitimacy of his misconduct is not in controversy, and it appears that all procedural requirements were satisfied to sustain his discharge under OTH conditions. Additionally, while Petitioner's misconduct was based solely on his UA status from 11 May 1991 through 14 July 1991, the extent of that misconduct was more than sufficient to justify the under OTH conditions characterization of his service.

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 nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct; brief length of service; Petitioner's statements regarding the stressful conditions that he experienced in attempting to gain custody of his siblings, which contributed to his UA status; Petitioner's post-service accomplishment and service to his community; the character references from a lifelong friend

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and a fellow shipmate; and the passage of time since Petitioner's discharge. As such, the Majority believed that the mitigating factors warranted equitable relief in the interests of justice. Specifically, the Majority determined that Petitioner's stressful situation attempting to gain custody of his siblings had a huge impact why he went UA, thus his characterization of service should be upgraded to general (under honorable conditions).

MAJORITY RECOMMENDATION

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

That Petitioner be issued a new DD Form 214 reflecting that his service 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.

MINORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board Minority 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 under OTH conditions 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 simply found that the mitigating circumstances were insufficient to overcome the severity of Petitioner's lengthy UA. While not violent in nature, the seriousness of the offense adversely affects good order and discipline in the Navy, and especially while assigned to a naval vessel ([REDACTED]). The Minority did not believe that the Petitioner provided sufficient evidence and/or post-service accomplishments to be potentially mitigating circumstances to outweigh the seriousness of Petitioner's misconduct. As such, the Minority determined that no relief was warranted and that Petitioner's under OTH discharge remains just in light of all relevant circumstances.

MINORITY RECOMMENDATION

In view of the above, the Board Minority 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.

11/8/2023

[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Grant Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

11/24/2023

[REDACTED]