



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

[REDACTED]
Docket No. 7475-23
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],
USN, [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, 15 Nov 12
(3) NAVPERS 1070/605, History of Assignments
(4) NAVPERS 1070/613, Administrative Remarks, 22 March 1989
(5) NAVPERS 1070/617, Court Memorandum, 9 August 1990
(6) NAVPERS 1070/613, Administrative Remarks, 18 November 1990

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 discharge be upgraded to honorable.
2. The Board considered Petitioner's allegations of error or injustice on 6 November 2023 and, pursuant to its governing policies and procedures, determined that the equitable relief indicated below 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:
 - 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 Navy and began a period of active duty service on 18 August 1987. See enclosure (2).

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

- d. Upon completion of his initial recruit training, Petitioner reported for duty onboard the [REDACTED] ([REDACTED]) on or about 18 December 1987. See enclosure (3).
- e. On 22 March 1989, Petitioner was designated as a Postal Clerk. See enclosure (4).
- f. On 9 August 1990, Petitioner was convicted by a special court-martial (SPCM) of dereliction in the performance of his duties by willfully failing to deliver the U.S. Postal Money Order Sales Report to the [REDACTED] Disbursing Officer, in violation of Article 92, Uniform Code of Military Justice (UCMJ); wrongfully appropriating funds collected from money order sales in violation of Article 121, UCMJ; and forging the signature of another with intent to defraud in violation of Article 123, UCMJ. He was sentenced to four months of confinement; forfeiture of \$356 pay per month for four months; reduction to E-1; and a bad-conduct discharge (BCD). See enclosure (5).
- g. On 15 October 1990, the convening authority approved the sentence adjudged. See enclosure (5).
- h. Upon completion of his confinement, Petitioner was placed on involuntary leave pending appellate review of his BCD on 18 November 1990. See enclosure (6).
- i. On 21 November 1991, Petitioner's BCD was executed. See enclosure (2).
- j. Petitioner requests clemency based on several factors:
 - (1) He contends his conduct and proficiency ratings were good; he was a good Sailor who made a terrible mistake.
 - (2) He has been a good citizen since his discharge, went back to school, raised his children, and is a highly motivated individual in the professional workforce helping others to achieve their goals.

Included with his application was his enlisted evaluation report for the period 18 December 1987 to 31 January 1989; a diploma reflecting his Associates Degree in Business Administration from Rowan College; a certificate acknowledging his support for Boys Town; a court document from 1999 reflecting that he was awarded custody of his three minor children; a 2017 letter of reference from Petitioner's former landlord; a certificate of completion of a formal training program in the safe operation of Powered Industrial Lift Trucks from 2009; several training certificates earned by Petitioner while serving the confinement adjudged by the SPCM; and an excerpt from the transcript of his SPCM reflecting that Petitioner was suffering from family-related adversity at the time of his misconduct, took responsibility for his actions, and showed sincere remorse; and Petitioner's resume. See enclosure (1).

MAJORITY CONCLUSION:

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

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

The Majority found no error or injustice in Petitioner's BCD at the time that it was executed. The legitimacy of the misconduct for which Petitioner was discharged is not in controversy, as it was proven beyond a reasonable doubt at the SPCM, Petitioner has not denied it, and Petitioner expressed his regret for it. There also does not appear to be any controversy regarding the process by which Petitioner was discharged. The Majority applied the presumption of regularity to establish that Petitioner received all process due to him in the appellate review process, which is supported by the fact that Petitioner's BCD was not actually executed for more than a year after his release from confinement. Finally, the Majority found that the punishment imposed, to include the BCD, was reasonable and appropriate given the offenses of which Petitioner was convicted.

The Majority also considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, the entirety of Petitioner's naval service, which appears to have been favorable until his misconduct; that Petitioner showed remorse and apparently took responsibility for and cooperated with the investigation of his misconduct; the family-related adversities that Petitioner was reportedly dealing with at the time of his misconduct; that Petitioner apparently made restitution for the money he stole; Petitioner's post-service academic and professional accomplishments, to include his record of employment as well as his service to the community and provision for his family; the non-violent 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. Based upon these mitigating factors, the Majority believed that clemency is warranted in the interests of justice. Specifically, the Majority found that the combined weight of these mitigating factors sufficiently outweighed the severity of Petitioner's misconduct to justify an upgrade of Petitioner's discharge characterization to general (under honorable conditions).

Although the Majority found the weight of the mitigating factors to be sufficient to justify the equitable relief described above, it did not find those mitigating factors to so significantly outweigh the severity of Petitioner's misconduct to justify the extraordinary relief that he requests. In this regard, the Majority found that Petitioner's misconduct was relatively severe, as it demonstrated an egregious violation and abuse of the trust afforded to him as a postal clerk. As such, the Majority did not believe that Petitioner's service could reasonably be characterized as honorable.

The Majority noted an apparent administrative error in Petitioner's DD Form 214. Specifically, it appears that Petitioner was mistakenly credited with active service during the period that was on involuntary appellate leave. He was credited with over four years and three months of active service, when in fact it appears that he should have been credited with just under three years of service.¹

¹ Enclosure (2) reflects that Petitioner was confined from 9 August 1990 until 18 November 1990, while enclosure (6) reflects that he was assigned to involuntary appellate leave on 18 November 1990. The Majority assumes that Petitioner remained in this status until his BCD was executed on 21 November 1991. Accordingly, it appears that Petitioner should only have been credited with active service from 18 August 1987 until 8 August 1990.

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

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 21 November 1991 was characterized as "General (under honorable conditions)."

That Petitioner's new DD Form 214 properly account for Petitioner's time lost while in an involuntary appellate leave status in blocks 12 and 29.

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 no 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 BCD at the time that it was executed.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether clemency 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, but reached a different conclusion. Specifically, the Minority found the severity of Petitioner's misconduct for which Petitioner was discharged to far outweigh all of the mitigating circumstances combined. Petitioner was placed into a position of trust and confidence as a postal clerk, and he abused that trust to enrich himself. He also forged a signature effectuate this offense. The Minority believed that Petitioner has already benefited from the mitigating circumstances leading up to his conviction, as evidenced by the relatively light sentence imposed for this misconduct. While the Minority acknowledged Petitioner's favorable post-service record, it simply did not find this record to be of sufficient merit to justify any equitable relief under the circumstances.

The Minority concurred with the Majority conclusion that Petitioner's naval record should be corrected to accurately reflect his active service time.

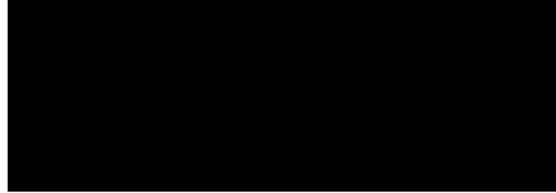
MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends only that Navy Personnel Command administratively correct Petitioner's DD Form 214 to accurately account for Petitioner's involuntary appellate leave time in blocks 12 and 29. No further corrective action should be taken on Petitioner's naval record.

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

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.

12/1/2023



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief and corrective action recommended by the Majority above.)
- MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct only the corrective action recommended by the Minority above.)
- Petitioner's Request Approved (Full Relief – I generally concur with the Majority conclusion that clemency is warranted in the interests of justice, but I do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I find that the mitigating circumstances did so significantly outweigh the severity of the misconduct for which Petitioner was discharged to justify the relief that Petitioner requests. Accordingly, I direct the relief and corrective action recommended by the Majority above, except that Petitioner's service is to be characterized as honorable. Petitioner is also to be issued an Honorable Discharge Certificate.)

1/6/2024

