



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

█
Docket No. 1534-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █, ¹
USN, █

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/enclosures
(2) DD Form 4, Enlistment/Reenlistment Document – Armed Forces of the United States, 12 March 1982
(3) █, Court Memorandum, 14 April 1983
(4) DD Form 214
(5) NAVPERS 1070/601, Immediate Reenlistment Contract, 6 March 1985
(6) NAVPERS 1070/613, Administrative Remarks, 31 August 1989
(7) NAVPERS 1070/607, Court Memorandum, 2 August 1981
(8) █ Record of Unauthorized Absence, 6 September 1991
(9) Fleet Training Center, █ CO Memo █ Ser █ 14/3301, subj: [Petitioner]; Recommendation for Separation by Reason of Misconduct due to Drug Abuse and Misconduct due to Commission of a Serious Offense, 2 October 1991
(10) NAVPERS 1070/607, Court Memorandum, 23 September 1991
(11) Fleet Training Center, █ CO Memo 1900 █ Ser █ 014/3987, subj: Notice of Administrative Board Procedure Proposed Action, 20 September 1991
(12) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, 20 September 1991
(13) BUPERS Message, subj: Misconduct Discharge ICO [Petitioner], dtg 021847Z OCT 91
(14) NAVPERS 1070/607, Court Memorandum, 4 October 1991
(15) BCNR Letter █ Docket No: 4679-12, 1 April 2013

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

¹ Petitioner's name was legally changed since his discharge. The name appearing on this record of proceedings is the name reflected in his naval record.

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

2. The Board considered Petitioner's allegations of error or injustice on 1 April 2024 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 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 the Navy pursuant to a pre-service drug abuse waiver on 12 March 1982 and began a period of active duty service on 1 July 1982. See enclosure (2).

d. On 14 April 1983, Petitioner received nonjudicial punishment (NJP) for being disrespectful in language towards a superior petty officer in violation of Article 91, Uniform Code of Military Justice (UCMJ);³ and for damaging government property in violation of Article 108, UCMJ.⁴ He was required to forfeit \$100 pay per month for one month and to perform 10 days of extra duty. See enclosure (3).

e. Petitioner reenlisted on 6 March 1985 after honorably completing his first enlistment. See enclosures (4) and (5).

f. On 6 March 1991, Petitioner extended his enlistment for 10 months at the request and for the convenience of the government. See enclosure (4).

g. On 31 August 1989, Petitioner attended an Alcohol and Drug Abuse Management Seminar. See enclosure (6).

h. On 1 August 1991, Petitioner received his second NJP for unauthorized absence (UA) in violation of Article 86, UCMJ;⁵ and for violating a lawful order in violation of Article 92, UCMJ.⁶ He was required to forfeit \$200 pay per month for one month and to perform 15 days of extra duty, and reduced to the next inferior pay grade (E-5).⁷ See enclosure (7).

² This request constitutes a request for reconsideration of the Board's previous denial of relief in Docket No. 4679-12.

³ Petitioner allegedly said to the superior petty officer, "F*** it take me to Mast," or words to that effect.

⁴ Petitioner allegedly threw pencils into the ceiling, damaging several ceiling tiles of a value of about \$96.60.

⁵ Petitioner was allegedly absent from his place of duty during the morning of 19 July 1991.

⁶ Petitioner allegedly violated an order to have his doctor verify his claimed whereabouts during his UA on the morning of 19 July 1991.

⁷ The reduction in rate was suspended for six months.

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

i. Petitioner was UA from 14-15 August 1991. As a result, the suspension of his reduction in grade to E-5 was vacated on 6 September 1991. See enclosures (8) and (9).

j. On 20 September 1991, Petitioner received his third NJP for UA in violation of Article 86, UCMJ;⁸ and for the wrongful use of amphetamine/methamphetamine in violation of Article 112a, UCMJ.⁹ He was required to forfeit \$550 pay per month for two months; restricted and required to perform extra duty for 45 days; and reduced to the next inferior pay grade (E-4). See enclosure (10).

k. By memorandum dated 20 September 1991, Petitioner was formally notified that he was being considered for an administrative discharge from the naval service by reason of misconduct due to drug abuse and commission of a serious offense. See enclosure (11).

l. On 20 September 1991, Petitioner acknowledged receipt of the notification referenced in paragraph 3k above and waived his right to consult with counsel and to request an administrative discharge board. See enclosure (12).

m. By memorandum dated 2 October 1991, Petitioner's commander recommended that Petitioner be expeditiously discharged from the naval service under other than honorable (OTH) conditions. In making this recommendation, he stated that Petitioner was "fully aware of the Navy's Zero Tolerance Policy" and a "hindrance to good order and discipline." See enclosure (9).

n. By message dated 2 October 1991, the separation authority directed that Petitioner be administratively discharge from the naval service under OTH conditions for misconduct due to drug abuse. See enclosure (13).

o. On 3 October 1991, Petitioner received his fourth NJP for failing to go at the time prescribed to his appointed place of duty in violation of Article 86, UCMJ.¹⁰ He was restricted and required to perform extra duty for 15 days and reduced to the next inferior pay grade (E-3). See enclosure (14).

p. On 9 October 1991, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (4).

q. On 7 March 2013, the Board denied Petitioner's previous request for relief in Docket No. 4679-12. See enclosure (15).

r. Petitioner asserts that his OTH discharge was inequitable based upon "one isolated incident in nine years of otherwise honorable service with no other adverse actions." He

⁸ This was the UA referenced in paragraph 3i above.

⁹ Petitioner was alleged to have used amphetamines/methamphetamines on or before 16 August 1991. He subsequently tested positive for the use of this illegal substance on 26 August 1991 and 10 September 1991, but no disciplinary action was taken pursuant to these results.

¹⁰ Petitioner allegedly failed to report to the Restricted Person's Muster on 22 September 1991.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
USN, ██████████

acknowledged his “one horrible mistake,”¹¹ and claims that it has cost him substantially for over 30 years. He claims to have served honorably in the ██████████ during ██████████ ██████████, and to have lived his life “in a way that [he] think[s] exhibits [his] commitment to improving [his] community of ██████████, ██████████, and the greater ██████████ National Park region,” and requests that the Board consider the totality of his military service and the life he’s led since his discharge.¹² Petitioner’s application is supported by character references from three local community leaders. See enclosure (1).

MAJORITY CONCLUSION:

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

The Majority found no error in Petitioner’s discharge under OTH conditions for misconduct when it was administered. Petitioner’s misconduct does not appear to be in controversy. He admitted to the use of illegal drugs, and all of his other misconduct was addressed through his various NJPs during his naval service. There also appears to be no controversy regarding the process by which Petitioner was discharged. He received proper notice of the basis for his proposed administrative discharge, and voluntarily waived his right to an administrative discharge board before it was acted upon. Finally, Petitioner’s misconduct was of sufficient severity, both in nature and in quantity, to justify the adverse characterization of his service. In this regard, Petitioner’s misconduct consisted of more than “one horrible mistake” as he described it, and he had more than the one adverse action that he claims.

In addition to reviewing the circumstances of Petitioner’s discharge at the time 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 entirety of Petitioner’s naval service, which included his first honorably completed enlistment and otherwise honorable service resulting in his advancement to petty officer (E-6) before the misconduct resulting in three separate NJPs over the last two months of his naval career; the fact that Petitioner agreed to extend the term of his enlistment for the convenience of the government, and that all of his relevant misconduct occurred during this voluntary extension; the relatively minor and non-violent nature of Petitioner’s misconduct; Petitioner’s acknowledgment of his wrongdoing and sincere remorse for the conduct which resulted in his discharge; the character references provided for review; the evidence of Petitioner’s post-service professional success, contributions to his community, and favorable reputation in that community; and the passage of time since Petitioner’s discharge. The Majority found these mitigating factors sufficient to justify some equitable relief. Specifically, the Majority determined that Petitioner’s characterization of service should be upgraded to general (under honorable conditions) based upon the totality of the circumstances.

¹¹ Petitioner states that he took a second job at a local night club as a doorman, checking identifications, and then as a Disc Jockey, and that friends convinced him to “take this drug” that would make him more alert and able to work both jobs without being tired.

¹² Petitioner describes his successful business ventures at and/or around the ██████████ National Park since his discharge.

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

Although the Majority found the mitigating circumstances sufficient to justify some equitable relief, it did not find those mitigating circumstances to so significantly outweigh the severity of Petitioner's misconduct to justify the extraordinary relief of an upgrade to fully honorable as he requested. In this regard, the Majority noted that Petitioner's misconduct consisted of much more than "one horrible mistake" as he claimed. During his second period of enlistment, Petitioner had already received NJP for violations of Articles 86 and 92, UCMJ, and had a second UA which resulted in the vacation of a suspended punishment, before the "one horrible mistake" that he described. Four NJPs over the course of a naval career are a significant number of such adverse actions, and in the Majority's opinion made such extraordinary relief inappropriate under the circumstances.

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 interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 9 October 1991 was characterized as "General (under honorable conditions)." All other entries reflected in Petitioner's current 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 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 in Petitioner's discharge under OTH conditions when it was executed.

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 factors as did the Majority, but reached a different conclusion. Specifically, the Minority applied more weight to the severity of Petitioner's misconduct than did the Majority. Petitioner had four NJPs over the course of his naval career, which represents a significant amount of misconduct. The Minority also found that the Petitioner grossly understated his misconduct by describing it as "one horrible mistake," and falsely claiming to have had no other adverse actions. The record reflects that Petitioner essentially stopped being a professional Sailor in 1991, necessitating the need for his involuntary discharge under OTH conditions. Accordingly, the Minority found that the mitigating factors insufficient to justify any equitable relief under the circumstances.

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

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-entitled matter.
5. The foregoing action of the Board is submitted for your review and action.

4/16/2024



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 (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)
- Petitioner's Request Approved (Full Relief – I concur with the Majority conclusion that equitable relief is warranted in the interests of justice, but I do not believe that the Majority's recommendation goes far enough to adequately serve those interests. Specifically, I found that the mitigating circumstances did so significantly outweigh the severity of Petitioner's misconduct so as to justify the relief that he requested. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner's service is to be characterized as honorable. Petitioner shall also be issued an Honorable Discharge Certificate.)

