



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

██████████
Docket No. 1992-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
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
(2) DD Form 214
(3) NAVPERS 601-13 Administrative Remarks
(4) NAVMED-MA, Report of Board of Medical Survey, 18 April 1961
(5) BUPERS Memo Pers-F321 ██████████, subj: [Petitioner]; General Discharge by reason of unsuitability, 26 May 1961
(6) NAVPERS 601/NAVCOMPT 516, Court Memorandum, 6 June 1961 (with NAVPERS 601A, Supplementary Court Memorandum)
(7) DD Form 464-1, Admission Classification Summary, 15 August 1961
(8) Review pursuant to Article 66(c), UCMJ, of general court-martial convened by ██████████, in the case of United States v. [Petitioner], in the Board of Review, U.S. Navy, Case No. ██████████, 25 August 1961
(9) ██████████, General Court-Martial Supplementary Order ██████████, 13 October 1961
(10) NAVPERS 3048, Request for Restoration, 19 October 1961
(11) Naval Clemency Board Results, Serial No. ██████████, approved 22 December 1961
(12) NAVPERS 601/NAVCOMPT 512, Record of Discharge, Release from Active Duty, or Death, 2 February 1962

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 an upgrade of his characterization of service to general (under honorable conditions). See enclosure (1).

2. The Board reviewed Petitioner's allegations of error or injustice on 15 April 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the corrective action indicated below should be taken upon Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures; relevant

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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 regulation within the Department of the Navy (DON).

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 29 July 1960. See enclosure (2).

d. On 6 September 1960, Petitioner reported for duty at [REDACTED] at [REDACTED]. See enclosure (3).

e. On 20 February 1961, Petitioner commenced a period of unauthorized absence (UA) which continued until he surrendered himself at [REDACTED] on 15 March 1961. See enclosure (3).

f. On 21 March 1961, Petitioner presented for medical treatment for a laceration on his finger at [REDACTED] after becoming involved in an argument with and assaulting a commissioned officer.¹ A psychiatric assessment was requested, and he was diagnosed with a severe emotional instability reaction. As a result, a medical board determined that he suffered from "an inherent preexisting personality disorder which renders him unsuitable for military service." See enclosure (4).

g. By memorandum dated 26 May 1961, the Chief of Naval Personnel (CNP) directed that Petitioner be discharged from the Navy for unsuitability with a general (under honorable conditions) characterization of service.² See enclosure (5).

h. On 6 June 1961, Petitioner was convicted by a general court-martial (GCM) of the UA referenced in paragraph 3e above in violation of Article 86, Uniform Code of Military Justice (UCMJ); two specifications of striking a superior commissioned officer on 21 March 1961 in violation of Article 90, UCMJ; and willfully destroying government property valued at

¹ According to Petitioner at the time, he got into an argument with an Ensign after being reproached for having a hole in his uniform. He claimed to have ended the argument amicably with a hand shake, only to shortly thereafter find himself in the Executive Officer's office being informed that he would be put on report for striking an officer. The next thing he knew, he had put his hand through a glass window and cut his hand. He did not remember striking an officer. He also reported that this was not the first time that something like this had happened to him. He was later charged, however, with first striking the Ensign in the face with his fist, and then striking and wrestling with the same Ensign after putting his hand through the window.

² The Board presumes that the CNP was unaware that the Petitioner was pending court-martial charges at the time of this directive.

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approximately \$9.37 (i.e., the window that he put his hand through) in violation of Article 108, UCMJ.³ He was sentenced to forfeit all pay and allowances, to be confined at hard labor for 12 months, to be reduced to E-1, and to be discharged from the Navy with a bad-conduct discharge. See enclosure (6).

i. On 5 July 1961, the convening authority approved the GCM sentence as adjudged. Petitioner was confined at the [REDACTED]. See enclosure (6).

j. On 15 August 1961, Petitioner received a neuropsychiatric examination which found a chronic severe emotional instability reaction existing since before Petitioner's enlistment. See enclosure (7).

k. On 25 August 1961, the DON Board of Review (BOR) set aside the GCM finding of guilty to one of the two specifications of striking a superior commissioned officer in violation of Article 90, UCMJ, and reduced Petitioner's sentence to confinement to 10 months.⁴ See enclosure (8).

l. On 13 October 1961, the convening authority approved the findings and sentence, as modified by the BOR. See enclosure (9).

m. On 19 October 1961, Petitioner requested to be restored in the Navy. He stated that his "thoughts towards the Navy and [his] country have changed a great deal since being confined [sic] here." See enclosure (10).

n. On 22 December 1961, the Naval Clemency Board recommended that Petitioner not be granted clemency and that his request for restoration in the Navy be denied. See enclosure (11).

o. On 2 February 1961, Petitioner's BCD was executed. See enclosure (12).

p. Petitioner contends that relief is warranted because he felt at the time of his service that he should have had a chance to serve his country and because he was a "foolish young man." He also noted that it has been approximately 60 years since his discharge and he is now 82 years old. Petitioner's application consisted entirely of his signed DD Form 214.

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.

³ Petitioner pled guilty to the UA in violation of Article 86, UCMJ, but not guilty to the remaining charges. Accordingly, his conviction to the latter two charges was contrary to his pleas.

⁴ This charge was set aside because the law officer improperly consulted with members of the prosecution regarding the form of the charge outside of the presence of Petitioner or his counsel, and these consultations were not properly placed on the record, in violation of Articles 26(b) and 39, UCMJ. All other adjudged punishments, to include the BCD, were approved.

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The Majority found no error in the Subject's BCD. He was convicted by a GCM and sentenced to a BCD, and that conviction and sentenced survived the appellate process. In the absence of evidence to the contrary, the Board applies the presumption of regularity to establish that Petitioner received all process due to him in this regard. Petitioner also did not contend that his GCM was erroneous.

In addition to considering the circumstances of Petitioner's BCD at the time it was executed, the Majority also considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice. In this regard, the Board considered, among other factors, Petitioner's relative youth and immaturity at the time of his misconduct; Petitioner's preexisting personality disorder which likely made him more prone to the irrational behavior which resulted in some of the charges of which he was convicted; 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 determined that the clemency requested by Petitioner is warranted in the interests of justice.

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 29 July 1960 was characterized as "General" and that he was issued a General Discharge Certificate. All other entries currently reflected on his DD Form 214 are to remain unchanged.

That a copy of this report 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 evidence of any error in Petitioner's BCD 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 did not concur with the Majority conclusion that they warranted clemency. In the absence of evidence of an error or injustice in Petitioner's BCD when it was executed, Petitioner bears the burden of proving to this Board that his BCD represents an injustice today. He offered the Board next to no basis reach such a conclusion. Specifically, he offered no evidence of any post-service accomplishments or contributions to society which might justify the clemency that he seeks. The Minority was open to granting Petitioner clemency if it is truly warranted, but was

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not willing to grant it gratuitously without any legitimate basis. Petitioner made no effort to provide the Board with such a basis.⁵

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.

7/18/2024

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief – I concur with the Majority conclusion and therefore direct the corrective action 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.)

[REDACTED]

Assistant General Counsel (M&RA) 11/26/24

⁵ Pursuant to reference (a), Petitioner is entitled to request reconsideration upon the submission of matters not previously considered by the Board. The Minority would encourage Petitioner to request such reconsideration and provide the Board with evidence of his post-service activities to justify the relief that he seeks.