



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

█
Docket No. 2033-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █, 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/attachments
(2) Standard Form 93, Report of Medical History, 30 October 1991
(3) NAVPERS 1070/613, Administrative Remarks, 16 September 1992
(4) DD Form 1966, Record of Military Processing – Armed Forces of the United States, 20 October 1992
(5) DD Form 214
(6) NAVPERS 1070/605, History of Assignments
(7) NCIS Report of Investigation
(8) Naval Medical Center █ CO Memo 1910 35, subj: Notice of an Administrative Board Procedure Proposed Action, 8 May 1995
(9) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of, Privileges, *date illegible*
(10) NAVPERS 1070/613, Administrative Remarks, 7 June 1995
(11) Administrative Discharge Board Summarized Record of Proceedings, 3 August 1995
(12) █ Memo, subj: Letter of Deficiency Regarding Administrative Discharge, 7 July 1995
(13) █ Memo, subj: Supplemental Letter of Deficiency Regarding Administrative Discharge Proceedings ICO [Petitioner], 22 August 1995
(14) Naval Medical Center █ CO Memo 1910 Ser 35/299, subj: Recommendation for Separation ICO [Petitioner], 11 September 1995
(15) BUPERS Message, subj: Admin Discharge ICO [Petitioner]/(UIC 00619) PERS 832, dtg 041905Z Oct 95

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 her characterization of service be upgraded to honorable² and her

¹ This name is reflected in Petitioner's naval record. She has since married and changed her last name.

² Petitioner alternatively requested an upgrade of her characterization of service to general (under honorable conditions).

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

narrative reason for separation changed to “Secretarial Authority” (with a corresponding change to her separation authority).

2. The Board reviewed Petitioner’s allegations of error or injustice on 5 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. On 30 October 1991, Petitioner received a medical examination pursuant to her intended enlistment in the Navy. During this examination, she expressly denied any history of marijuana use or other drug abuse. See enclosure (2).

d. Petitioner subsequently signed an enlistment contract and was enrolled in the Delayed Entry Program (DEP) pending her formal enlistment upon graduation from high school.³ However, on 24 August 1992 she was administratively separated from the DEP with an uncharacterized entry level separation for refusing to enlist. See enclosures (3) and (4).

e. On 30 October 1992, Petitioner received a waiver to permit her enlistment despite her previous discharge from the DEP. See enclosure (4).

f. Petitioner enlisted in the Navy and began a period of active duty service on 22 February 1993. See enclosure (5).

g. Upon completion of her initial entry training, Petitioner was assigned as a Hospital Corpsman to the Naval Medical Center [REDACTED] ([REDACTED]). See enclosure (6).

h. On 31 March 1995, Petitioner reportedly confessed to providing methamphetamine to a fellow Sailor assigned with her at [REDACTED] during the summer of 1994 during a Naval Criminal Investigative Service (NCIS) investigation.⁴⁵ She reportedly claimed that the other Sailor

³ Petitioner was projected to graduate from high school in June 1992.

⁴ According to the subsequent testimony of the investigating NCIS agent during Petitioner’s administrative discharge board proceedings, a civilian doctor in the [REDACTED] emergency room was the primary subject of the interview. The command had hoped to use Petitioner as an informant to gather evidence against this doctor.

⁵ Petitioner’s statement was not recorded in writing and/or signed by Petitioner at the time it was made because she terminated the interview before it could be so recorded or verified. Accordingly, the statement was subsequently

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

approached her for methamphetamine, and that she then obtained it from a civilian coworker (presumably the civilian doctor) who she declined to name. During this interview, Petitioner allegedly admitted to preservice marijuana use and methamphetamine while in the Navy.⁶ See enclosure (7).

i. By memorandum dated 8 May 1995, Petitioner was formally notified that she was being considered for an administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and drug abuse, as evidenced by her admissions to the NCIS interrogator on 31 March 1995. See enclosure (8).

j. After consulting with counsel, Petitioner subsequently elected to exercise all her rights with regard to the administrative discharge process, to include her right to submit statements on her own behalf and to an administrative discharge board.⁷ See enclosure (9).

k. On 7 June 1995, Petitioner received nonjudicial punishment (NJP) for failing to obey a lawful order in violation of Article 92, Uniform Code of Military Justice (UCMJ).⁸ See enclosure (10).

l. Petitioner's administrative discharge board convened on 3 August 1995 at [REDACTED]. During this hearing, both Petitioner and the NCIS agent who interviewed Petitioner on 31 March 1995 testified under oath. The administrative discharge board also considered Petitioner's statement in rebuttal to the summarized version of her testimony prepared by the NCIS agent. Upon completion of the hearing, the administrative discharge board unanimously found that the preponderance of the evidence supported the allegations of misconduct due to commission of a serious offense and drug abuse, and recommended that Petitioner be administratively discharged from the Navy under other than honorable (OTH) conditions. See enclosure (11).

m. By memorandum dated 7 July 1995, Petitioner's detailed military defense counsel submitted a letter of deficiency regarding the administrative discharge proceedings. Specifically, he asserted that the administrative discharge board could not have possibly concluded that Petitioner committed the offenses alleged, even under the relatively low preponderance of the evidence standard. See enclosure (12).

n. By memorandum dated 22 August 1995, Petitioner's detailed military defense counsel supplemented his previously submitted letter of deficiency, asserting error in the failure to

summarized by the NCIS agent. Petitioner later disputed the veracity of several assertions made in this summary. That rebuttal is in the record but is illegible. However, the signed and sworn statement of the other Sailor corroborated this reported confession.

⁶ Petitioner reportedly stated that her last methamphetamine use was at a friend's house in late 1993, and that she had used methamphetamine not more than five times since joining the Navy.

⁷ Although it is illegible, it appears from context that the statement disputing NCIS agent's summary of her 31 March 1995 interview was provided in the context of responding to the proposed administrative separation.

⁸ Petitioner reportedly failed to provide a urine sample during a unit-wide urinalysis on 22 May 1995. Petitioner asserts in her present application that she failed to submit a urine sample because she was sent for a psychiatric evaluation that day because she showed up for duty distraught and had a bruise on her face, and that she was excused from duty for the day after that appointment. She did not, however, appeal her NJP.

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

include the misconduct for which she received NJP (see paragraph 3k above) amongst the bases for separation. See enclosure (13).

o. By memorandum dated 11 September 1995, the [REDACTED] commander forwarded the results of the administrative discharge board, along with the two letters of deficiency submitted by Petitioner's counsel, to the separation authority along with his concurrence with those results.⁹ See enclosure (14).

p. By message dated 4 October 1995, the separation authority directed Petitioner's administrative separation from the Navy under OTH conditions. See enclosure (15).

q. On 10 November 1995, Petitioner was discharged from the Navy under OTH conditions. See enclosure (5).

r. Petitioner, through counsel, asserts that her post-service societal and familial contributions demonstrate sufficient rehabilitation warranting equitable relief, and that there were mitigating circumstances during her enlistment which necessitate review of her OTH characterization of service. With regard to her post-service activities, Petitioner asserts that she remarried another service member and maintained her interest in medical health.¹⁰ She also claims to be an active member of the Veterans of Foreign Wars (VFW), for which she served as her chapter's junior Vice President and as a Trustee and in which capacity she has served Veterans, and that she is active in the lives of her children and volunteers at their school. With regard to the mitigating circumstances during her enlistment, Petitioner asserts that the substantiation of her in-service drug use was based solely upon the uncorroborated and inaccurate summary of her testimony of 31 March 1995 as recorded by the NCIS agent. 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 or injustice in Petitioner's discharge under OTH conditions at the time that it was administered. The allegation of methamphetamine distribution does not appear to be in controversy, as she now only disputes the sufficiency of the evidence regarding her alleged drug use and the distribution allegation was corroborated by the signed and sworn statement of the person to whom she allegedly provided the methamphetamine. That was by far the most serious allegation of misconduct against Petitioner, and alone would have justified her discharge under OTH conditions. The Majority found no merit to Petitioner's claim that the allegation of drug use was supported by insufficient evidence. Contrary to her claim, the administrative discharge board did not substantiate that allegation based only upon the flawed summary of Petitioner's interview which she disputed. Rather, the administrative discharge board substantiated this allegation on the basis for the NCIS agent's sworn testimony regarding

⁹ The [REDACTED] addressed the alleged error raised in the supplementary letter of deficiency by finding that the administrative separation board's decision would undoubtedly have reached the same conclusion since additional misconduct would only have provided additional impetus for the members to vote as they did.

¹⁰ Petitioner is certified in medical coding and billing and is pursuing a degree with a high grade point average.

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

that interview during the hearing, which was subject to cross-examination by Petitioner's counsel. The fact that she was not afforded the opportunity to review the written summary until several weeks after the fact was not only her own decision by ending the interview, but was also irrelevant because the author of the summary testified under oath. Petitioner availed herself of the opportunity to dispute this allegation through her testimony, and the board members reviewed and considered her written statement disputing the veracity of the NCIS agent's summary, but the administrative discharge board members unanimously found that the allegation was supported by the preponderance of the evidence. Accordingly, the administrative discharge board simply found the NCIS agent's testimony regarding Petitioner's statement on 31 March 1995 to be more credible than her testimony to the contrary, which is not surprising since she also denied under oath having provided methamphetamine to her fellow Sailor despite the NCIS agent's testimony that she had admitted to such conduct and the other Sailor's sworn statement verify that fact and her claim to have engaged in all of her admitted preservice drug use during the relatively short window between completion of her pre-enlistment medical examination and entry on active duty was not particularly believable. The Majority found that there was clearly sufficient evidence to support the conclusion reached by the administrative discharge board in this regard. Finally, there does not appear to be any legitimate controversy regarding the process by which Petitioner was discharged. Petitioner was properly notified of the initiation and basis for her administrative discharge proceedings and availed herself of all of her rights in that regard. She was represented by qualified counsel at her administrative discharge board, and presented a competent defense to the allegations. Although her detailed military defense counsel asserted an error in that the misconduct for which she received NJP was not included within the administrative discharge proceedings, such omission could only have become relevant if the administrative discharge board had recommended Petitioner's retention and her command subsequently relied upon that misconduct to try to separate her again. As that did not occur, the omission averred to her favor. Having found that the evidence supported the misconduct alleged and compliance with the procedural requirements for such a discharge, the Majority found no error in Petitioner's discharge under OTH conditions. Having found an OTH characterization of service appropriate for the substantiated misconduct, the Majority also found no injustice in this result.

In addition to reviewing the circumstances of Petitioner's discharge for error, 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, Petitioner's post-service professional accomplishments, which reflect significant rehabilitation and maturity; Petitioner's post-service contributions to her community and to Veterans through her volunteer service at her children's school, in her various leadership roles in the local chapter of her VFW, and as a military spouse and mother; the various character references provided for review; Petitioner's reportedly clean post-service criminal record; the non-violent nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of her misconduct; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Majority determined that some equitable relief is warranted in the interests of justice. Specifically, the Majority found that Petitioner's characterization of service should be upgraded to general (under honorable condition).

Although the Majority found the factors described above to provide a sufficient basis to justify

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

the equitable relief described, it did not find those factors sufficient to justify upgrading her characterization to fully honorable as she requested. In this regard, the Majority determined that Petitioner's distribution of methamphetamine to a fellow Sailor was very serious misconduct which had the potential of causing serious harm. As such, the Majority did not find the mitigating factors to so significantly outweigh the severity of Petitioner's discharge to justify the truly extraordinary relief that she requested. For the same reason, the Majority found no injustice in Petitioner's narrative reason for separation. Petitioner's discharge for misconduct was deserved, and the Majority did not find the mitigating circumstances sufficient to justify changing the reason for that discharge to something that it wasn't.

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 her service ending on 10 November 1995 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 or injustice in Petitioner's discharge under OTH conditions when 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 mitigating factors as did the Majority, but reached a different conclusion. Specifically, the Minority found that the severity of Petitioner's misconduct, particularly her distribution of an illegal and dangerous drug to a fellow Sailor, far outweighed all of the potentially mitigating factors which might otherwise warrant equitable relief combined. Accordingly, the Minority determined that equitable relief is not warranted in the interests of justice.

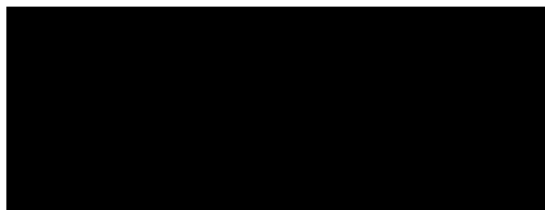
MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

Subj: REVIEW OF NAVAL RECORD OF FORMER [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.

4/17/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- MAJORITY Recommendation Approved (Partial 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.)
- 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 serve those interests. Specifically, I found that the mitigating circumstances did so significantly outweigh the severity of Petitioner's misconduct to justify the relief that she requested. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that her service ending on 10 November 1995 was characterized as honorable; that the narrative reason for her separation and separation authority was "Secretarial Authority" (or the closest analogous basis for separation in effect at the time); and that her reentry code was "RE-1." Petitioner shall also be issued an Honorable Discharge Certificate.)

