



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

█
Docket No. 2196-24
Ref: Signature date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER █, █, 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
(2) DD Form 214
(3) P601-7R, Court Memorandum, 15 September 1982
(4) P601-7R, Court Memorandum, 22 December 1982
(5) █ Message, subj: [Petitioner]; Recommendation for Admin Discharge by Reason of Misconduct, dtg 111618Z JAN 83
(6) COMNAVPERSOM Message, subj: Misconduct Discharge ICO [Petitioner], dtg 191707 Jan 83

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 to his characterization of service.
2. The Board considered Petitioner's allegations of error or injustice on 25 March 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 finds 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 limitations and consider Petitioner's application on its merits.

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USN, [REDACTED]

c. Petitioner enlisted in the Navy and began a period of active duty service on 10 August 1981.¹ See enclosure (2).

d. On 15 September 1982, Petitioner received non-judicial punishment (NJP) for failing to obey a lawful order issued by his ship's executive officer in violation of Article 90, Uniform Code of Military Justice (UCMJ); and for being derelict in the performance of his duties in violation of Article 92, UCMJ. He received 30 days of extra duty and restriction; and was required to forfeit \$200 pay per month for two months.² See enclosure (3).

e. On 22 December 1982, Petitioner received his second NJP for violating a lawful order issued by a superior petty officer in violation of Article 91, UCMJ. He was required to forfeit \$200 pay per month for one month. The previous suspension of the forfeitures adjudged during his first NJP was also vacated. See enclosure (4).

f. On 3 January 1983, Petitioner was notified that he was being processed for administrative separation from the Navy by reason of misconduct due to commission of a serious military offense. Petitioner subsequently waived his right to consult with counsel and to request an administrative discharge board. See enclosure (5).

g. By message dated 11 January 1983, Petitioner's commander recommended that Petitioner be administratively separated from the Navy under other than honorable (OTH) conditions. In making this recommendation, his commander stated that Petitioner "requires inordinate supervision, does not respond to counseling or authority and is considered to be severely lacking in potential for continued useful service." See enclosure (5).

h. By message dated 19 January 1983, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions by reason of misconduct due to commission of a serious offense. See enclosure (6).

i. On 24 January 1983, Petitioner was discharged from the Navy under OTH conditions for misconduct due to frequent involvement of a discreditable nature with military authorities. See enclosure (7).

j. In his application to the Board, Petitioner expressed regret for any and all unfortunate circumstances leading to his OTH discharge. He did not assert any error or injustice in his discharge and provided no documentation in support of his application. See enclosure (1).

¹ Enclosure (5) reveals that Petitioner enlisted in the Navy with a criminal history. He was arrested by civilian authorities in December 1979 and charged with possession of cocaine. He was subsequently entered into a deferred prosecution program, upon completion of which a finding of nolle prosequi was entered into his record.

² The adjudged forfeitures were suspended for six months.

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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 material error in Petitioner's discharge at the time it was administered. The misconduct for which he was discharged is not in controversy, as he does not dispute it and expressed his remorse. It also appears that all procedural requirements were satisfied to sustain Petitioner's discharge, as he was properly notified of his administrative separation and waived his rights in that regard. Finally, Petitioner's misconduct was of sufficient severity to justify a discharge under OTH conditions. The Majority did note that the narrative reason for separation, separation authority, and separation code reflected on Petitioner's DD Form 214 appear to be erroneous. Specifically, the separation authority directed that Petitioner be separated pursuant to MILPERSMAN 3630600, which corresponds to the basis for separation for which Petitioner was placed on notice (i.e., misconduct due to commission of a serious offense), but the separation authority and narrative reason for separation reflected on Petitioner's DD Form 214 reflects "NAVMILPERSCOM 3420185" and "Misconduct – Frequent Involvement of a Discreditable Nature with Civil or Military Authorities," respectively. The Majority found this error to be harmless, however, as "frequent involvement of a discreditable nature with military authorities" is less stigmatizing than the "commission of a serious offense."

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 Board considered, among other factors, Petitioner's expressed remorse of the circumstances resulting in his discharge; the relatively minor 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 factors, the Majority determined that equitable relief is warranted in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice.

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 24 January 1983 was characterized as "General (under honorable conditions)." All other entries reflected in Petitioner's current DD Form 214 are to remain unchanged.

That no further corrective action be taken on Petitioner's naval record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

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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 material error in Petitioner's discharge at the time it was administered.

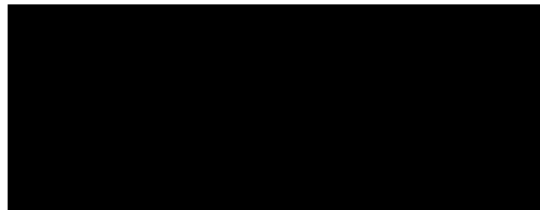
Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Minority considered the same potentially mitigating factors as did the Majority but found them insufficient to justify any equitable relief. As there was no material error in Petitioner's discharge under OTH conditions for misconduct, it is Petitioner's burden to prove to this Board that the OTH characterization of service in his naval record constitutes an injustice given the totality of the circumstances. Petitioner offered the Board with no evidence or even argument to make this case; he did not even attempt to satisfy his burden. The Minority appreciated Petitioner's stated remorse and was open to granting equitable relief if provided a legitimate basis for doing so. However, in the absence of any evidence, or even description, of Petitioner's activities over the past 40 years since his discharge which might otherwise justify such equitable relief, or even any effort by Petitioner to satisfy his burden other than a single sentence expressing his remorse, the Minority was not willing to grant such extraordinary relief gratuitously. The Minority believed that the Petitioner should be invited to submit additional information regarding his activities since his discharge for reconsideration of this decision.

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

4/5/2024



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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- X MAJORITY Recommendation Approved (Grant 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.)

