



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

Docket No: 3005-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED],  
USN, XXX-XX-[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  
(3) [REDACTED] ONBOARD [REDACTED] ( [REDACTED] )  
January 1983  
(4) [REDACTED] AT [REDACTED] 7 March 1984  
(5) NAVPERS 1070/613, Administrative Remarks, 6 March 1984  
(6) [REDACTED], AT SEA, 16 July 1984  
(7) [REDACTED] Message, subj: [Petitioner]; Recommendation for Admin Separation by Reason of Misconduct as evidenced by Three or More Punishments under the UCMJ within the Current Enlistment, and Misconduct due to Drug Abuse based on the Wrongful Possession of a Controlled Substance and Possession of Drug Paraphernalia, dtg 201325Z AUG 84  
(8) COMNAVJLPERSCOM Message, subj: Misconduct Discharge ICO [Petitioner] dtg 241435Z AUG 84  
(9) NDRB Decisional Document, Docket No. ND91-01757  
(10) DD Form 215, 24 July 1992

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 his service be upgraded to general (under honorable conditions) and his narrative reason for separation be changed. Petitioner further requested "reconsideration in the redetermination of [his] disability."<sup>1</sup>

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<sup>1</sup> It appears from the context of his narrative request that Petitioner is seeking disability benefits from the Department of Veterans Affairs (VA), rather than military disability retirement or separation benefits. He provided no evidence or argument in support of the latter, but did discuss his need and desire for the former. Eligibility for VA benefits is not within the purview of the Board. Accordingly, the Board did not directly address this request, although the Majority's recommendation below may incidentally have the effect that Petitioner desires subject to a VA's determination that he condition is service connected..

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2. The Board reviewed Petitioner's allegations of error or injustice on 24 June 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the corrective action indicated below should be taken on Petitioner's naval record. 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 regulation within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest 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 28 December 1981. See enclosure (2).

d. On 16 January 1983, Petitioner received non-judicial punishment (NJP) for wrongfully possessing drug paraphernalia in violation of Article 92, Uniform Code of Military Justice (UCMJ), and for unlawfully possessing marijuana in violation of Article 134, UCMJ.<sup>2</sup> He was restricted to the limits of the ship for 60 days; required to forfeit \$150 pay per month for one month; and reduced in grade to E-1. See enclosure (3).

e. On 6 March 1984, Petitioner received his second NJP for unauthorized absence (UA) in violation of Article 86, UCMJ;<sup>3</sup> disrespect to a superior petty officer in violation of Article 91, UCMJ; and malingering in violation of Article 115, UCMJ.<sup>4</sup> He was required to forfeit \$100 pay per month for two months and to perform extra duty for 45 days, and was reduced in rate to E-2.<sup>5</sup> See enclosure (4).

f. After receipt of his second NJP referenced in paragraph 3e above, Petitioner was formally counseled in writing and warned that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative separation. This counseling

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<sup>2</sup> In enclosure (1), Petitioner claimed that he obtained \$10 worth of marijuana while intoxicated, and that the shore patrol confiscated it and detained him before he got back to the ship.

<sup>3</sup> Petitioner was allegedly UA for approximately eight hours on 30-31 January 1984.

<sup>4</sup> In enclosure (1), Petitioner claimed that he had been prescribed five days of light duty due to an ankle sprain, but that he was able to walk pain free after just two days. As such, he decided to leave the ship and go home for the night. When he encountered his Master Chief on the gangplank, he responded to an inquiry regarding his destination by stating that he was "going dancing." He claims that this statement was the basis for the disrespect charge, but that he did not intend it as such but rather meant only to indicate that he was feeling better. He also denied being UA, as he was not restricted to the ship for medical reasons. Finally, he explained the reason that he recovered so quickly was that he was misdiagnosed. In 1999 he was finally accurately diagnosed as having Gout, which he claims to have been the actual source of his ankle sprain.

<sup>5</sup> The reduction in rate was suspended for six months.

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was explicitly made to afford Petitioner the opportunity undertake corrective action. See enclosure (5).

g. On 15 July 1984, Petitioner received his third NJP for wrongfully communicating a threat in violation of Article 134, UCMJ.<sup>6</sup> He was restricted and required to perform extra duty for 45 days; required to forfeit \$334 pay per month for two months; and reduced to the next inferior pay grade. See enclosure (6).

h. On 14 August 1984, Petitioner was formally notified that he was being processed for administrative separation for misconduct due to a pattern of misconduct and for drug abuse. This notice informed him that he could be discharged under other than honorable (OTH) conditions. See enclosure (7).

i. On 15 August 1984, Petitioner acknowledged receipt of the notice referenced in paragraph 3h above and waived his right to an administrative separation board and to consult with counsel. He did, however, exercise his right to submit a written statement for consideration by the separation authority.<sup>7</sup> See enclosure (7).

j. By message dated 20 August 1984, Petitioner's commander recommended that Petitioner be administratively separated from the Navy under OTH conditions for misconduct due to his pattern of misconduct as evidenced by his three NJPs, and for drug abuse as evidenced by his possession of marijuana and drug paraphernalia. In making this recommendation, Petitioner's commander made the following statement:

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<sup>6</sup> In enclosure (1), Petitioner claimed that he was charged with communicating a threat for nothing more than gesturing toward a known trouble-maker to stay away from his work area.

<sup>7</sup> Petitioner's statement read as follows:

I have been informed that my squadron is trying to process me for an admin discharge. I am waiving the right to go in front of an admin board, because I feel that would not be in my best interest. I've had a few problems in the past adapting to military life and I've made some mistakes, and suffered the consequences. My goal when I came in the Navy was to be an Aircontrolman [sic]. I could not get through the school due to lack of education.

So my ace in the hole was to serve my country and put money into VA so I can go to school and receive a proper education and go home with an honorable discharge.

I just got married in May 1984 and my attitude and persistence have improved a great deal. My wife is pregnant and unemployed and is dependent on my salary to live, and on the military hospital to give birth to our baby.

If I am discharged it will leave us out in the cold. I don't think that would be fair after I put all this time in the Navy by supporting my country.

I only have four and one-half months to go before my EAOS. I am asking you to please let me finish my enlistment, and go home with a little dignity. I feel that I should at least have a chance to finish my enlistment and earn my honorable discharge so I can build a good foundation for my family and future. I hope you feel the same. If you feel a discharge is required in my case, I would appeal to you to consider a characterization of service of general under honorable conditions.

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Since reporting to this command in JUN 82, [Petitioner] has, on occasion, proven that he can be a productive Sailor, when guided by near constant supervision. He has also proven that his attitude is typically one of near total disregard for the rules and regulations by which those of us in the naval service must abide. [Petitioner] lacks self-discipline and respect for authority as evidenced by his recent poor evaluations and numerous offenses under the UCMJ. He has failed to positively respond to counseling, [extra military instruction], or NJP. Apparent in his NJP record are many instances of poor judgment and misbehavior, both on and off duty, that have reflected poorly on [Petitioner] and this command. His one documented drug possession charge involved bringing drugs aboard ship in a foreign port. He has admitted to the CO subsequent use of marijuana while on active duty. [Petitioner] is unsuited for the naval service and should not be allowed to join the ranks of those service members who have served their country honorably.”

See enclosure (7).

k. By message dated 24 August 1984, the separation authority directed that Petitioner be administratively discharged from the Navy under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (8).

l. On 13 September 1984, Petitioner was discharged from the Navy under OTH conditions for misconduct.<sup>8</sup> See enclosure (2).

m. In June 1991, Petitioner requested that the Naval Discharge Review Board (NDRB) upgrade his discharge characterization to honorable. He asserted that such relief was warranted because he suffered the consequences for his mistakes in the Navy and had been paying for them ever since due to the characterization of his discharge; that he had been a self-employed contractor for the previous five years and desired to work for the government; that he was in a 12-step recovery program and had been sober for nearly two years; and that he had suffered the stigma of his unfavorable discharge long enough and it was holding him back from good employment. On 12 May 1992, the NDRB unanimously found that Petitioner’s discharge was equitable and proper, and therefore determined that no relief was warranted. See enclosure (9).

n. On 24 July 1992, Petitioner was issued a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) reflecting that his narrative reason for separation in block 28 of his DD Form 214 was corrected by direction of the Chief of Naval Personnel to reflect “Misconduct: Pattern of Misconduct.” See enclosure (10).

o. Petitioner asserts that his problems in the Navy were alcohol related, and that he required but was denied alcohol rehabilitation treatment. He attributed the circumstances of his second NJP to a Gout flareup triggered by his alcohol use. He claims to have been sober for 35 years, and that he has helped many untreated alcoholics with their addiction and established 12-step programs in local confinement facilities. Petitioner further claimed to be an active member of his church and to have built a successful painting contracting business which sponsors local little

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<sup>8</sup> The narrative reason for separation reflected on Petitioner’s DD Form 214 stated “Misconduct: Frequent Involvement.”

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leagues. Petitioner's application is supported by multiple character references. Finally, Petitioner claims to have a confirmed disability which he attributes directly to radiation exposure while working corrosion control onboard the [REDACTED]. 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 for a pattern of misconduct at the time it was administered. Petitioner received NJP on three separate occasions, which certainly constitutes a pattern of misconduct for which he could be discharged. He was also provided a formal written warning that further misconduct could result in his administrative separation in order to give him the opportunity to correct his behavior after his second NJP but continued to engage in misconduct. Although Petitioner now claims that he did not commit the misconduct reflected in his second and third NJPs, that misconduct was adjudicated during his NJP hearings at the time and Petitioner did not deny this misconduct in his statement to the separation authority. To the contrary, he admitted to his difficulty adjusting adapting to military life. It appears that all procedural requirements were satisfied to sustain this discharge, as Petitioner was properly notified that he was being processed for administrative separation for a pattern of misconduct and the possibility that he could be separated under OTH conditions. Petitioner voluntarily waived his right to an administrative separation board hearing but exercised his right to submit a written statement for consideration by the separation authority. Finally, an OTH characterization was authorized and appropriate given the frequency of Petitioner's misconduct.

In addition to reviewing the propriety 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, Petitioner's claim that he requested but was denied treatment for alcohol abuse and that much of his misconduct was alcohol related; Petitioner's denial of the misconduct involved in his second and third NJPs, and the context that he provided for those incidents; Petitioner's claim to suffer from a service-connected illness; Petitioner's post-service record of accomplishment and community service achieved despite the stigma of his OTH discharge; Petitioner's impressive alcohol rehabilitation efforts, and his efforts to help other similarly afflicted individuals; the character references provided for review; the relatively minor and 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 modest 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).

Although it was willing to upgrade Petitioner's characterization of service, the Majority did not believe that a change to Petitioner's narrative reason for separation was warranted under the circumstances. Petitioner's narrative reason for separation accurately described the reason for his discharge, and while the Majority found the mitigating factors sufficient to provide the

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equitable relief described above it did not believe those factors were sufficient to justify changing his naval record in such a manner as to inaccurately describe the circumstances of his discharge. In this regard, the Board notes that the narrative reason for separation reflected on the DD Form 214 has no bearing on Petitioner's eligibility for VA benefits.

#### 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 interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that Petitioner's service ending on 13 September 1984 was characterized as "General (under honorable conditions). All other entries reflected on Petitioner's current DD Form 214, to include his narrative reason for separation, 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 determination that there was no error or injustice in Petitioner's discharge under OTH conditions at the time that 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 reached a different conclusion. Specifically, the Minority assigned greater weight to Petitioner's misconduct than did the Majority, specifically with regard to his drug offenses. Based upon the evidence in the record, it appears that Petitioner intended to bring the marijuana he purchased in a foreign port on to the ship. This was a significant aggravating factor for the Minority. The Minority also considered the likely impact of Petitioner's repeated misconduct upon good order and discipline in his unit, and that the contemporary evidence suggests that Petitioner's drug involvement was more pervasive than the single possession charged for which he received NJP. Finally, the Minority noted that Petitioner refuses to this day to take responsibility for the misconduct reflected in his second and third NJPs. The Minority did not find Petitioner's explanation of the circumstances of the misconduct reflected in these NJPs to be credibility because he did not provide this context in either his statement to the convening authority at the time or in his application to the NDRB nearly seven years after his discharge. The Board found this factor to weigh against granting any equitable relief, and therefore to offset some of the mitigating factors which weighed in favor of such relief. Ultimately, the Minority simply found that the severity and frequency of Petitioner's misconduct outweighed all of the



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mitigating factors combined, and that equitable relief was therefore not warranted given the totality of the circumstances.

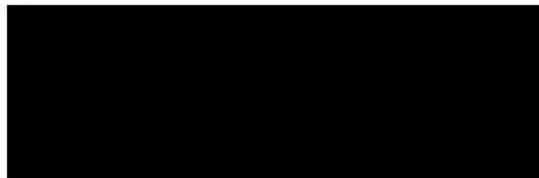
MINORITY RECOMMENDATION:

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.

8/20/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X 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 do not believe that the Majority recommendation goes far enough to serve the interests of justice. Specifically, I find that the mitigating circumstances were sufficient to justify relieving Petitioner of the continuing stigma of his narrative reason for separation. Accordingly, I direct the relief recommended by the Majority above, except that the narrative reason for separation, separation authority, and separation code on Petitioner's newly issued DD Form 214 shall also be changed to reflect that the narrative reason for his separation was "Secretarial Authority."

