



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

[REDACTED]
Docket No. 5179-24
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,
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Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014
(c) PDUSD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury," 24 February 2016
(d) USD (P&R) Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," 25 August 2017
(e) 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
(f) NAVPERS 15791B, Bureau of Naval Personnel Manual, 1 July 1969
(g) NAVPERS 15560A, Naval Military Personnel Manual, 1 January 1982
(h) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) DD Form 1966, Application for Enlistment – Armed Forces of the United States (Excerpt)
(4) NAVPERS 1070/613, Administrative Remarks, 9 May 1977
(5) NAVPERS 601-5, History of Assignments
(6) Subject's Memo, subj: Hardship Discharge for humanitarian reasons; request for, 15 December 1977
(7) [REDACTED] CO Memo [REDACTED] 1900 Ser: 1993, First Endorsement on Enclosure (6), subj: Hardship Discharge for humanitarian reasons; request for, 16 December 1977
(8) DD Form 173, Joint Message Form, dtg 060147 JAN 78
(9) P601-7R, Court Memorandum, 27 February 1979
(10) Standard Form 513, Clinical Record – Consultation Sheet
(11) UA Data Entries

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- (12) [REDACTED] Message, subj: Report of Return of Deserter (NMPC 1600-2) NMPC-843/036, dtg 141237Z OCT 87
- (13) BCNR Letter Docket No. NR20240005179, 9 May 2024
- (14) Petitioner's Letter, re: [Subject] Docket No. NR20240005179, 9 May 2024
- (15) BCNR Memo Docket No: NR20240005179, subj: Advisory Opinion ICO [Petitioner], 18 September 2024
- (16) Petitioner's Letter, re: [Subject] Docket No. NR20240005179, 18 September 2024

1. Pursuant to the provisions of reference (a), the widow of the deceased 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 the Subject's discharge be upgraded.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 25 October 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the corrective action indicated below should be taken on the Subject's naval record in the interests of justice. Documentary material considered by the Board included the enclosures; relevant portions of the Subject's naval record; and applicable statutes, regulations, and policies, to include references (b) – (e).

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. The Subject enlisted in the Navy and began a period of active duty service on 11 March 1976 with a pre-service criminal record.² See enclosure (2).

c. On 9 May 1977, the Subject received nonjudicial punishment (NJP) for being passed out drunk at his post as a sentinel in violation of Article 113, Uniform Code of Military Justice (UCMJ).³ His punishment consisted of a reduction in rate to the next inferior pay grade, but this punishment was suspended for six months. See enclosure (4).

d. On 30 November 1977, the Subject reported for duty onboard the [REDACTED], at its home port in [REDACTED], on 30 November 1977. See enclosure (5).

e. By memorandum dated 15 December 1977, the Subject requested a hardship discharge to care for his mother. Specifically, he reported that his mother was in declining health⁴ and explained that she lived in a rural home heated by a stove which uses wood or coal without

¹ The Petitioner provided evidence that the Subject died on 7 January 2024, and that she was his spouse. The marriage certificate reflects that the Subject and Petitioner were married on 7 August 1979, approximately two months after the Subject commenced the unauthorized absence (UA) described in paragraph 3k below.

² The Subject reported previous arrests for criminal trespassing in May 1974 and for driving while intoxicated in October 1975. See enclosure (3).

³ This offense occurred on 4 April 1977, while the Subject was still in training.

⁴ The Subject provided a medical record describing his mother's admissions for convulsive seizures and diagnoses with epilepsy and bronchitis.

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running water, without anyone to help her with these tasks. He expressed his doubt that his mother would survive the coming winter on her own. Although his actual request, dated 15 December 1977, expressed the hardship as his mother's inability to tend to the tasks necessary to sustain her life (i.e., retrieving wood, coal, and water for her rural home), his accompanying affidavit, dated 13 September 1977, explained that his mother needed his presence at home to work and manage her small tobacco farm.⁵ See enclosure (6).

f. By memorandum dated 16 December 1977, the [REDACTED] commander endorsed the Subject's hardship discharge request, recommending approval. See enclosure (7).

g. By message dated 6 January 1978, the Chief of Naval Personnel (CNP) disapproved the Subject's hardship discharge request because it did not meet the standards for separation outlined in reference (f).⁶ See enclosure (8).

h. On 27 February 1979, the Subject received his second NJP for wrongful appropriation in violation of Article 121, UCMJ, and for disobeying a lawful regulation in violation of Article 92, UCMJ.⁷ His punishment consisted of 10 days of restriction and reduction to the next inferior pay grade. See enclosure (9)

i. In February 1979, the Subject was referred to the [REDACTED] Medical Officer by his supervisor due for his alcohol abuse. On 27 February 1979, the Medical Officer expressed his opinion that the Subject was becoming physically and psychologically addicted to alcohol and referred him for an assessment in [REDACTED].⁸ See enclosure (10).

j. On 2 March 1979, the Subject was assessed by an Alcohol Abuse Counselor at the [REDACTED]. This assessment revealed that the Subject consumed up to 10 beers in a single sitting but abstained for long periods between such binges. The Subject also revealed during this session that he did not like the Navy and wished that he could either get out or be reassigned elsewhere. Based upon this assessment, the Subject was recommended for substance abuse prevention classes, but not for in-patient care. See enclosure (10).

k. On 1 June 1979, the Subject commenced a period of UA which continued for over eight years until he was apprehended by civilian authorities and returned to military control on 13 October 1987. See enclosures (11) and (12).

⁵ This affidavit was corroborated by similar affidavits from his mother, a County Judge, and her mother's friends.

⁶ In accordance with Article 3850240(b)(1) of reference (f), a hardship discharge could not be authorized solely "[f]or financial or business reasons (including the operation of a family business)" except under extraordinary circumstances as determined by the CNP or his designee."

⁷ The details of these offenses are not apparent from the record. The Subject apparently reported to a substance abuse counselor that his misconduct was alcohol related (see paragraph 3g below), but that counselor noted that his service record did not support this claim.

⁸ The date of this referral is stated as 27 February 1978 on the record, but the Board presumes the year to be a scrivener's error given its context relative to other events in the record. Specifically, the follow-up with an alcohol counselor in [REDACTED] occurred on 2 March 1979.

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l. On 27 November 1987, the Subject was discharged from the Navy under other than honorable (OTH) conditions in lieu of trial by court-martial.⁹ See enclosure (2).

m. In her original application to the Board, dated 26 April 2024 and received by the Board on 8 May 2024, Petitioner asserted that the Subject's discharge should be upgraded because he went UA due to the mental distress he endured after his mother shot and killed herself. She noted that he had previously tried to obtain a hardship discharge to care for his "mentally-disturbed mother," but that his request was denied. The Subject indicated in block 14 of the DD Form 149 that her request was related to post-traumatic stress disorder (PTSD) and "other mental health," but provided no documentation supporting this claim. See enclosure (1)

n. Because Petitioner asserted that her claim was based upon PTSD and other mental health conditions without providing any documentation, the Board requested that she provide any documentation available to support this claim pursuant to its regular business practice by letter dated 9 May 2024. See enclosure (13).

o. Petitioner responded to the request referenced in paragraph 3n above by letter dated 9 May 2024. In this response, she asserted that there were numerous calls made to the [REDACTED] Police Department between 2004 and 2016 for domestic violence and suicide attempts by the Subject, and that he had to appear in court one time for domestic violence but that she dropped the charges since she knew he was suffering from mental illness. Petitioner also described an incident on 17 March 2013 when the Subject "stabbed [her] in the shoulder" and then attempted to take his life, as well as another suicide attempt on an unknown date. Finally, the Petitioner reported that the Subject was diagnosed with "high blood pressure, depression and anxiety" by his doctor. Petitioner asserted that she does not have documentation pertaining to any of the events and/or conditions that she claimed but presumed that they "would be on record at the Police Department, ambulance services and at the hospitals and [the Subject's] doctor's office" and gave her permission "to obtain any documentation necessary." See enclosure (14).

p. Because Petitioner asserted that her claim was based upon PTSD and/or other mental health condition(s), her application and the Subject's records were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board's consideration. Based upon this review, the licensed clinical psychologist found no evidence of any in-service mental health diagnosis other than the aforementioned alcohol abuse diagnosis. She opined that it was possible that the Subject suffered symptoms of depression given his mother's physical, emotional, and financial difficulties, but noted that the offense of wrongful appropriation would not be attributable to such depression and that the duration of the Subject's UA exceeded that which could reasonably be so attributable. The licensed clinical psychologist ultimately opined that there was sufficient evidence of alcohol abuse, which was likely exacerbated by family

⁹ The Subject's naval record does not include documentation regarding the charges filed or a request for separation in lieu of trial by court-martial. In the absence of evidence to the contrary, the Board relies upon the presumption of regularity to establish that all procedures were followed to effectuate this outcome. Accordingly, the Board presumes that the court-martial charges were preferred against the Subject upon his return from UA, that the Subject subsequently requested separation in lieu of trial by court-martial with the assistance of counsel, and that this request was approved by proper authority. Enclosure (2) reflects that the latter requirement occurred on 16 November 1987.

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stress, and that it is possible that depressive symptoms coincided with his alcohol abuse. However, she found insufficient evidence that all of the Subject's misconduct could be attributed to a mental health condition. See enclosure (15).

q. By letter dated 18 September 2024, Petitioner responded to the AO referenced in paragraph 3p above. She asserted that the issue in question was not whether the Subject had a drinking problem prior to his mother's death, but rather that his request for a hardship discharge to help his mother was denied. In this regard, Petitioner asserted that the Subject sought a hardship discharge when he realized that his mother was in mental distress and addicted to prescription medications.¹⁰ Petitioner also noted that the Subject received his second NJP just two months after his mother's death, which suggests that his actions were influenced by his mental distress. See enclosure (16).

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 interest of justice.

The Majority found no error or injustice in the Subject's discharge at the time it was administered. In accordance with Article 3630650 of reference (g), an enlisted member of the Navy could be separated in lieu of trial by court-martial upon the member's request if charges were preferred with respect to an offense for which a punitive discharge was authorized and the member's commanding officer determined that the member is unqualified for further naval service. Applying the presumption of regularity, the Board presumes that the Subject was charged with a violation of Article 86, UCMJ, for his UA of more than eight years; that the Subject requested separation in lieu of trial by court-martial after consulting with counsel; and that the convening authority approved this request upon determining that the Subject's record disqualified him for further naval service. Article 3630650 of reference (g) further provided that such a discharge is normally under OTH conditions. Accordingly, the Board found no error or injustice in the Subject's discharge at the time it was administered.

Because Petitioner based her request for relief in whole or in part upon a claimed mental health condition, to include PTSD, the Majority reviewed her application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to the Petitioner's claim that the Subject suffered from a mental health condition during his naval service, as well as to the effect that such a condition may have had upon his judgment and behavior. Even applying very liberal consideration, the Majority found insufficient evidence to conclude that the Subject was suffering from PTSD during his naval service. The Board sought documentation from the Petitioner to support this claim, but she did not provide any supporting evidence. Rather, she asserted that evidence of her claims could be obtained from the Subject's doctor and provided permission for the Board to obtain it. It is Petitioner's burden to prove the elements of his claim; the Board is not an investigative body and does not seek out evidence to support an applicant's claim. As such, there was no evidence in the record to suggest that the Subject developed PTSD as a result of his mother's death. The Majority did, however, find

¹⁰ The Board notes that this was not the reason stated in the Subject's hardship discharge request.

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sufficient evidence through the application of liberal consideration that the Subject was suffering symptoms of depression during his service, and that those symptoms combined with his alcohol abuse disorder may have affected his judgment and behavior. Specifically, the Majority agreed with the AO at enclosure (15) in this regard. Accordingly, the Majority found sufficient evidence to conclude that at least some of the Subject's misconduct was mitigated by mental health symptoms he developed in the wake of his mother's death.

In addition to applying liberal consideration to Petitioner's claims regarding the Subject's mental health and the effect of his symptoms upon his judgment and conduct in accordance with references (b) – (d), 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 (e). In this regard, the Majority considered, amongst other factors, the mitigating effect of the Subject's mental health symptoms upon at least some of his misconduct, as discussed above; the tragic circumstances of the Subject's mother's death, following his denied request for a hardship discharge to care for her; the entirety of the Subject's naval career, which was generally honorable (apart from his first NJP for minor misconduct while he was in training) until after his mother's death; that the Subject himself recently died from lung cancer; the Subject's youth and immaturity at the time of his misconduct; and the passage of time since the Subject's discharge. Based upon these mitigating factors, the Majority determined that equitable relief is warranted. Specifically, the Majority determined that the Subject's characterization of service should be equitably upgraded to general (under honorable conditions) in the interests of justice.

Although it found the mitigating circumstances to carry sufficient weight to justify the equitable relief described above, the Majority did not find those mitigating circumstances to be nearly sufficient to justify an upgrade to the Subject's characterization of service from OTH to fully honorable. In this regard, the Majority noted that the Subject was discharged for very severe misconduct. He was UA for more than eight years, and that absence was terminated only by his apprehension. While his mental health symptoms may explain his original decision to walk away from the Navy, they do not justify or explain his decision to remain away for so long. The Majority also found that the Subject's wrongful appropriation charge was not mitigated by any mental health condition(s), as there is no logical nexus between those symptoms and such conduct, and that the misconduct reflected in the Subject's first NJP was also not mitigated since it predated the death of the Subject's mother. The Majority ultimately found that the mitigating circumstances did not so significantly outweigh the severity and frequency of the Subject's misconduct to justify such extraordinary equitable relief.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on the Subject's naval record in the interest of justice:

That the Subject be issued a new DD Form 214 reflecting that his active service ending on 27 November 1987 was characterized as "General (under honorable conditions)." All other entries reflected in his current DD Form 214 should remain unchanged.¹¹

¹¹ A copy of this corrected DD Form 214 should also be provided to the Subject's widow. Her contact information may be obtained from the Board.

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

That no further corrective action be taken on the Subject'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 material error or injustice warranting relief.

The Minority concurred with the Majority conclusion in all regards except that pertaining to equitable relief. Specifically, the Minority applied liberal consideration and agreed with the Majority conclusion that at least some of the Subject's misconduct was mitigated by his mental health in the wake of his mother's tragic death. The Minority also considered the same potentially mitigating factors as did the Majority, but reached a different conclusion with regard to the propriety of equitable relief.

Even considering the mitigating considerations described by the Majority above, the Minority did not believe that any equitable relief was warranted for the much the same reasons that the Majority found that the Subject's characterization of service should not be upgraded to fully honorable. The Subject was UA for more than eight years, and that absence was terminated only by his apprehension. If not apprehended, his absence would have continued indefinitely. While the Minority agreed that the Subject's mental health condition could explain why he decided to go UA in the first place, it does not explain or justify his decision to remain away for so long. This was very serious misconduct which, combined with the aggravating factor of two previous NJPs, likely would have resulted in significant punishment, to include lengthy confinement and a punitive discharge, if he was not separated in lieu of trial by court-martial. As such, the Minority believed that the Subject had already been afforded significant equitable consideration for the impact that his mother's death may have had upon him by avoiding those consequences.

In addition to the other considerations mentioned by the Majority to explain its decision not to upgrade the Subject's characterization of service to fully honorable, the Minority also found that the Subject's post-service conduct does not appear to justify the equitable relief generously recommended by the Majority. Petitioner provided no evidence or even a description of the Subject's post-service activities or conduct which might warrant equitable relief. She did, however, report in enclosure (13) that numerous calls were made to law enforcement due to domestic abuse by the Subject between 2004 and 2016, and that the Subject appeared in court to answer to a domestic violence allegation at least. She also reported that the Subject had stabbed her in 2013. While such violent criminal conduct may be attributable to a mental health condition, it still weighs heavily against granting any equitable relief in the interests of justice.

Finally, the Minority found that the Navy held no blame for the Subject's mental health at the time. While the Petitioner asserts that the Subject should have been granted a hardship discharge to care for his mentally-disturbed mother, the Subject never made the Navy aware of her mental state or his need to care for it. Rather, he explained only that his mother was in a declining state of health and that he was therefore needed to help her run the family farm. A hardship discharge could not be granted on this basis pursuant to the Navy regulations in effect at the time. As such,

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the Minority was skeptical of the Petitioner's claim that the Subject went UA because he lost faith in the Navy. It was reasonable to believe that the Subject went UA while distressed due to the circumstances of his mother's death, but not reasonable to suggest that he did so because he had lost faith in the Navy based upon the denial of his hardship discharge request approximately a year prior to his mother's death.

Ultimately, the Minority simply found the severity and frequency of the Subject's misconduct to far outweigh all of the mitigating factors, and that equitable relief was therefore 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 the Subject'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 in accordance with Section 6e(1)(b) of enclosure (1) to reference (h).

3/4/2025

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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.)
- X MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and direct that no corrective action be taken on the Subject’s naval record.)
- MAJORITY Recommendation Approved (with modification) (Full Relief – I concur with the Majority conclusion that equitable relief is warranted given the totality of the circumstances, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I find that the mitigating circumstances did so far outweigh the severity of the Subject’s misconduct that an upgrade to his characterization of service is warranted. Accordingly, I direct the relief recommended by the Majority, except that the Subject’s characterization of service is to be changed to “Honorable.” The Subject shall also be issued an Honorable Discharge Certificate. The corrected DD Form 214 and Honorable Discharge Certificate shall be delivered to the Subject’s widow.)

[REDACTED]

[REDACTED]

[REDACTED]