



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

[REDACTED]  
Docket No. 5318-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USN,  
[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  
(c) NAVPERS 15560C, Naval Military Personnel Manual, 15 August 1991

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 214  
(3) [REDACTED], Report of Medical Board, 29 April 1994  
(4) Felony Sentencing Order, Commonwealth v. [Petitioner], in the Circuit Court of the City of [REDACTED], Docket No. 941985F06  
(5) NAVPERS 1070/607, Court Memorandum, 24 March 1995  
(6) Transient Personnel Unit CO Memo 1910 TPU: Code 03, subj: Notice of an Administrative Board Procedure Proposed Action, 25 April 1995  
(7) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of Privileges, *undated*  
(8) Transient Personnel Unit CO Memo 1910 xxR 074-95, subj: Recommendation for Administrative Separation of [Petitioner] by Reason of Misconduct, 6 June 1995  
(9) BUPERS Message, subj: Admin Discharge ICO [Petitioner], dtg 241919Z JUL 95  
(10) NDRB Discharge Review Decisional Document, Docket No. ND01-01082

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 service be upgraded to honorable and his narrative reason for separation changed to "Secretarial Authority."

2. The Board reviewed Petitioner's allegations of error or injustice on 5 July 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice.<sup>1</sup> 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).

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<sup>1</sup> Although the Board was unanimous in finding that equitable relief is warranted in the interests of justice, it was not unanimous in the scope of equitable relief warranted.

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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 review Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty service on 5 January 1993. See enclosure (2).

d. On 4 April 1994, Petitioner was involved in a serious accident while operating a motorcycle at a high rate of speed while intoxicated. His passenger riding on the back of the motorcycle was killed in the accident, while Petitioner suffered serious bodily injuries.<sup>2</sup> See enclosure (3).

e. On 29 April 1994, a Medical Board convened in Petitioner's case. Based upon his injuries and limited mobility, the Medical Board assigned Petitioner to limited duty (LIMDU) for six months.<sup>3</sup> The Medical Board did, however, opine that Petitioner would be fit for full duty at the conclusion of this LIMDU period. See enclosure (3).

f. Petitioner was subsequently convicted of involuntary manslaughter in the Circuit Court of the City of [REDACTED], and on 3 February 1995 was sentenced to confinement for five years.<sup>4</sup> The Court suspended execution of that sentence and placed Petitioner on probation for five years, conditioned upon his serving of 30 days in the [REDACTED] City Jail and that he keep the peace, be of good behavior, and commit no crimes.<sup>5</sup> Petitioner was further ordered to participate in a Substance Abuse Program, to include alcohol counseling. See enclosure (4).

g. On 23 March 1995, Petitioner received non-judicial punishment (NJP) for an unauthorized absence (UA) from a working party in violation of Article 86, Uniform Code of Military Justice (UCMJ), and for being drunk on duty in violation of Article 112, UCMJ. His punishment consisted of the forfeiture of \$524.85 pay per month for one month; extra duty and restriction for 30 days; and reduction to the next lower grade.<sup>6</sup> See enclosure (5).

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<sup>2</sup> Petitioner's injuries included a comminuted closed right mid-shaft femur fracture; a comminuted right tibial fracture with an open right knee laceration; and a minimally displaced ulnar fracture. He was originally treated at [REDACTED] then transferred to [REDACTED].

<sup>3</sup> Petitioner's specific duty limitations were no physical readiness training, no sea duty, no prolonged walking or standing, no heavy lifting and no squatting. His physical activity was to be dictated by Physical Therapy (PT), and he was to remain in the vicinity of a major military institute with Orthopedic and PT capabilities.

<sup>4</sup> On motion of the prosecution, a separation charge of driving under the influence of alcohol was

<sup>5</sup> Petitioner's probation was to be unsupervised so long as he remained on active duty in the Navy. Upon discharge from the Navy, he was to report to the probation office to commence supervised probation for the remainder of his probation period.

<sup>6</sup> The reduction was suspended for six months.

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h. By memorandum dated 25 April 1995, Petitioner was formally notified that he was being considered for administrative separation from the Navy by reason of misconduct due to commission of a serious offense and due to a civilian conviction. This notice informed Petitioner that his discharge could be characterized as other than honorable (OTH). See enclosure (6).

i. Petitioner acknowledged receipt of the notice referenced in paragraph 3h above on 25 April 1995. After initially electing to exercise his right to an administrative discharge board, he subsequently elected to waive that right after consulting with counsel. He did, however, exercise his right to submit a statement for consideration by the separation authority.<sup>7</sup> See enclosure (7).

j. By memorandum dated 6 June 1995, Petitioner's commander recommended that Petitioner be separated from the Navy under OTH conditions for misconduct due to commission of a serious offense and civilian conviction. See enclosure (8).

k. By message dated 24 July 1995, the separation authority directed that Petitioner be discharged under OTH conditions for misconduct. See enclosure (9).

l. On 8 August 1995, Petitioner was discharged from the Navy under OTH conditions for misconduct. See enclosure (2).

m. In August 2001, Petitioner requested that the Naval Discharge Review Board (NDRB) upgrade his characterization of service to honorable. In support of this request, he offered the following statement: "I want my discharge upgraded to an honorable discharge. My record has been clean since being in the USN. I have been in no trouble and have moved forward in life since being discharged. I attend church regularly and am an honorable citizen." On 28 March 2002, the NDRB unanimously determined that no change was warranted to Petitioner's naval record. See enclosure (10).

n. Petitioner requests relief primarily on the basis of his post-service conduct. He reported that he moved home to [REDACTED] and focused on completing his probation after his discharge, which he did in February 2000. Recognizing his problem with alcohol, he committed himself to maintaining his sobriety. Specifically, he claims to have completed a year-long rehabilitation program in February 2006. Petitioner's application is supported by several letters of support attesting to his continued sobriety, character, and service to the community, primarily as a pastor in his church. Petitioner claims to have developed post-traumatic stress disorder (PTSD) as a result of the accident, and described the counseling that he has received to cope with that trauma. Since his discharge, Petitioner has earned a Bachelor of Arts degree in Pastoral Studies; a Masters of Divinity degree; and a Masters of Arts degree in Christian and Classical Studies, and

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<sup>7</sup> Petitioner's hand-written statement to the separation authority was as follows:

I do not think I deserve an other than honorable discharge. What happened was an accident. Nobody can ever imagine how sorry I am for what has happened. The only way to get on with my life is to return home.

I realize I lose all benefits, but the most important thing to me was my GI Bill. With the condition of my leg I only have about two to three goo years as a laborer. So you may see why tuition assistance would be so important.

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has served as a pastor for five years, often working with the homeless, recently released prisoners, addicts, and troubled teens. In addition to his ministry and volunteer work, Petitioner claims to also have worked as a car salesman, Sales Manager, Finance Manager, and Finance Director for various car dealerships since 2015. He accepted full responsibility for his actions and expressed deep regret for the consequences, but asked the Board to consider his post-service conduct as evidence of his true character. 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 misconduct at the time it was administered. Petitioner was convicted by proof beyond a reasonable doubt of involuntary manslaughter by civilian authorities, and he admits to his role in his friend's death. Per paragraph 3630600(1)(d) of reference (c), a Sailor could be administratively separated for misconduct due to civilian conviction when the specific circumstances of the offense warranted separation and a punitive discharge would be authorized for the same or closely related offense under the Manual for Courts-Martial (MCM) or the sentence includes confinement for six months or more without regard to suspension or probation. Petitioner's conviction for involuntary manslaughter met these criteria. Per paragraph 3630600(1)(c), a Sailor could be administratively separated for misconduct due to commission of a serious offense if the specific circumstances of the offense warranted separation and a punitive discharge would be authorized by the MCM for the same or a closely related offense. Petitioner's commission of involuntary manslaughter met the criteria for administrative separation under this basis as well. It appears as if all procedural requirements were satisfied to sustain Petitioner's discharge, as he was properly notified of his administrative discharge proceedings utilizing the administrative board process and voluntarily elected to waive his right to an administrative separation board. He did, however, exercise his right to submit a statement for consideration by the separation authority. Finally, an OTH discharge was authorized and appropriate under the circumstances. Per paragraph 3630600(3), OTH was the normal characterization assigned for discharges administered under these bases.

In addition to reviewing the circumstances of Petitioner's discharge at the time it was administered for error or injustice, the Board 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, the unintentional nature of the misconduct which resulted in Petitioner's discharge; Petitioner acceptance of responsibility and sincere remorse for his actions; that Petitioner reportedly developed PTSD as a result of the events of 4 April 1994 and presumably has suffered its effects ever since; Petitioner's recognition of his alcohol problem and efforts to rehabilitate himself; Petitioner's post-service record of service to his community, to include his ministry and volunteer work with several at-risk populations; Petitioner's post-service professional success despite the stigma of his OTH characterization of service; the letters of support attesting to Petitioner's character; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time

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since Petitioner's discharge. The Majority found the combined weight of these mitigating factors sufficient to justify the upgrade of Petitioner's discharge characterization to general (under honorable conditions) and to change his narrative reason for separation to "Secretarial Authority" on purely equitable grounds.

Although the Majority found the mitigating circumstances sufficient to justify the upgrade of Petitioner's discharge characterization to general (under honorable conditions), it did not find those circumstances to be nearly sufficient to justify the extraordinary relief that he requested. Regardless of his intent, a person died because Petitioner decided to ride his motorcycle while intoxicated. A civilian court believed this misconduct to be of such severity to justify a five year prison sentence, which weighed heavily against the equitable upgrade of his discharge to fully honorable. Additionally, Petitioner received NJP for a UA and for being drunk on duty even after his conviction and receipt of significant leniency from the Court in suspending his five-year sentence to confinement. The Majority believed it likely that that suspension may have been lifted and Petitioner would have served the entirety of his five-year prison sentence if this fact had come to the Court's attention. As such, the Majority found that the upgrade of Petitioner's discharge characterization to fully honorable as he requested was not warranted based upon the totality of the circumstances.

#### 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 8 August 1995 was characterized as "General (under honorable conditions)"; that his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; and that his separation code was "JFF." All other entries in Petitioner's current DD Form 214, to include his reentry code, 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 also determined that equitable relief is warranted in the interests of justice.

The Minority concurred with the Majority conclusion in all regards except for the scope of equitable relief warranted under the circumstances. Specifically, the Minority disagreed with the Majority conclusion that the mitigating circumstances warranted a change to Petitioner's narrative reason for separation. The Minority determined that such relief was not warranted for the same reason that the Majority explained that an upgrade to fully honorable was not warranted. Petitioner was properly discharged due to very severe misconduct which resulted in



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tragic but foreseeable consequences. As such, the Minority did not believe that the mitigating circumstances were nearly sufficient to justify essentially changing history to reflect that Petitioner was discharge for a different reason in addition to the other equitable relief generously granted by the Board.

MINORITY RECOMMENDATION:

In view of the above, the Minority 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 8 August 1995 was characterized as "General (under honorable conditions." All other entries in Petitioner's current DD Form 214, to include his narrative reason for separation, separation authority, separation code, and reentry code, 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.

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.

9/5/2024

[REDACTED]

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[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

\_\_\_\_ MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority’s conclusion and therefore direct the relief recommended by the Majority above.)

X MINORITY Recommendation Approved (Partial Relief – I concur with the Minority’s conclusion and therefore direct the relief recommended by the Minority above.)

\_\_\_\_ Petitioner’s Request Approved (Full Relief – I generally agree with the Majority’s conclusion that equitable relief is warranted in the interests of justice, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I found that the mitigating circumstances did so significantly outweigh the severity of Petitioner’s misconduct to justify the relief he requested. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as “Honorable.” Petitioner shall also be issued an Honorable Discharge Certificate.

\_\_\_\_ Board Recommendation Disapproved (Deny Relief – I do not concur with the Board’s conclusion that equitable relief is warranted in the interests of justice. Specifically, I find that the severity of Petitioner’s misconduct, resulting in the foreseeable death of another human being, far outweighs all of the mitigating circumstances combined, and that equitable relief is therefore not warranted in the interests of justice. Accordingly, I direct that no corrective action be taken on Petitioner’s naval record.)

[REDACTED]

Assistant General Counsel (M&RA)