



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

[REDACTED]
Docket No. 9216-24
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 15560A, Naval Military Personnel Manual, 1 January 1982
(d) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) DD Form 1966, Application for Enlistment – Armed Forces of the United States, 20 January 1981
(3) USN Drug Abuse Certificate (Enlistment Only), 20 January 1981
(4) DD Form 214
(5) NAVPERS 1070/607, Court Memorandum, 9 December 1983
(6) NAVPERS 1070/613, Administrative Remarks, 5 January 1984
(7) Standard Form 600, Health Record – Chronological Record of Medical Care, 23 January 1984
(8) NAVPERS 1070/607, Court Memorandum, 27 April 1984
(9) [REDACTED] Message, subj: [Petitioner]; Recommendation for Admin Separation by Reason of Misconduct due to Drug Abuse, dtg 220431Z NOV 84
(10) NAVPERS 1070/607, Court Memorandum 21 November 1984
(11) COMNAVMILPERSCOM Message, subj: Misconduct Discharge ICO [Petitioner] dtg 151402Z DEC 84

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 discharge be upgraded.

2. The Board reviewed Petitioner's allegations of error or injustice on 24 January 2025 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 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).

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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. During his pre-enlistment interview on 20 January 1981, Petitioner disclosed pretrial arrests for possession of a controlled substance and driving under the influence in June 1980,¹ and a childhood arrest for shoplifting in September 1973.² See enclosure (2). He also admitted to previous abuse of marijuana. See enclosure (3).

c. Petitioner subsequently enlisted in the Navy and entered active duty on 4 March 1981. See enclosure (4).

d. On 9 December 1983, Petitioner received non-judicial punishment (NJP) for the wrongful use of marijuana in violation of Article 134, Uniform Code of Military Justice (UCMJ).³ His punishment consisted of 45 days of extra duties and restriction; the forfeiture of \$352 pay per month for two months; and reduction in rate to E-3. See enclosure (5).

e. On 5 January 1984, Petitioner was formally counseled in writing regarding the marijuana use referenced in paragraph 3d above. He was warned that any further deficiencies in his performance and/or conduct could result in disciplinary action and/or in processing for administrative discharge. See enclosure (6).

f. On 23 January 1984, Petitioner was recommended for Level I Alcohol Rehabilitation Treatment. See enclosure (7).

g. On 27 April 1984, Petitioner received his second NJP for the wrongful use of marijuana in violation of Article 134, UCMJ.⁴ His punishment consisted of 45 days of extra duties and restriction, and the forfeiture of \$334 pay per month for two months. See enclosure (8).

h. On 5 October 1984, Petitioner was notified that he was being processed for administrative separation for misconduct due to drug abuse via the administrative board procedures. See enclosure (9).

i. On 11 October 1984, Petitioner acknowledge receipt of the notification referenced in paragraph 3h above and elected to exercise all of his rights in the administrative discharge process. See enclosure (9).

¹ Petitioner reported receiving a \$200 fine for this offense.

² Petitioner reported that this charged was dropped and he was released to his parents. He was 13-years old at the time.

³ This marijuana use was alleged to have occurred on 5 October 1983. Other evidence in the record reflects that Petitioner was already a participant in the command's Drug Surveillance Program when this use occurred. See enclosure (6).

⁴ This marijuana use was alleged to have occurred on 4 April 1984.

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j. On 16 November 1984, Petitioner changed his mind and elected to waive all of his rights in the administrative discharge process. See enclosure (9).

k. On 22 November 1984, Petitioner's commander recommended that Petitioner be involuntarily separated from the Navy under other than honorable (OTH) conditions despite what he described as a "good performance record" because of his "continued flagrant disregard for naval regulations and the well being of his shipmates." In making this recommendation, Petitioner's commander stated that Petitioner "has become an increased danger to himself, his shipmates, and this ship, and has clearly established that he does not intend to give up the use of drugs as part of his life style." See enclosure (9).

l. On 28 November 1984, Petitioner received his third NJP for the wrongful use of marijuana in violation of Article 112a, UCMJ.⁵ His punishment consisted of 45 days of extra duties and restriction, and the forfeiture of \$198 pay per month for two months. See enclosures (9) and (10).

m. By message dated 15 December 1984, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (11).

n. On 4 January 1985, Petitioner was discharged from the Navy under OTH conditions for misconduct due to drug abuse. See enclosure (4).

o. Petitioner expressed sincere remorse for his drug use in the Navy, and based his request for a discharge upgrade primarily upon his post-service conduct and rehabilitation.⁶ Specifically,

⁵ This marijuana use was alleged to have occurred on 20 November 1984.

⁶ Petitioner provided a personal statement which read in relevant part as follows:

I will never offer any excuses as to my marijuana usage while serving the latter part of my duty to the Navy. As I reflect back often on my service and realize that after I was discharged that this was a huge mistake. I knew then that I was taking a huge chance by partaking in this activity of using marijuana. To this day, I have many regrets in life, and this negligent act is at the top. To live life knowing that I did not receive an honorable discharge has always been a heavy burden on myself. I have only myself to blame. In 1991 I quit using marijuana but could not quit drinking. In 2008 after nearly dying from heavy drinking and cirrhosis of the liver I quit drinking. I knew that I had to stop drinking or I would die. My gastroenterologist doctor gave me six months to live [if] I kept up with my volume of drinking. Being a stubborn alcoholic, I continued drinking for another five months before finally checking into a rehabilitation center in [REDACTED]. I was admitted as an inpatient for 23 days. After discharge from this facility, I fought to stay sober and would go to any length to achieve sobriety and develop a recovery program.

As I sit here writing this today, I can proudly say that I have been sober for 15 years as of last November (2023).

Not only have I been able to repair relationships with family and friends, but I am employed in a vocation where I give back and assist individuals in the mental health fields that includes others suffering from drug and alcohol abuse. As of today, I am a job coach and job developer for individuals who are intellectually and/or physically disabled, who are wanting to work in community-based employment. After working in finance for a good part of my professional career, I have since achieved some lengthy sobriety and decided to help others

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he asserts that he stopped using marijuana in 1991, but was not able to stop his drinking until he nearly died in 2008. He described his professional and personal successes that he has been able to achieve having been sober for 15 years, and provided six character references attesting to his work ethic and performance and service in his community. 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 interest of justice.

The Majority found no error or injustice in Petitioner's discharge under OTH conditions for misconduct due to drug abuse when it was administered. In accordance with Article 3630620.1(a)(1) of reference (c), an enlisted Sailor could be administratively separated by reason of misconduct due to drug abuse for the illegal or wrongful use of a controlled substance. Petitioner wrongfully used marijuana at least three times during his naval service, so he could be separated from the Navy on this basis. It appears from the record that all procedural requirements were satisfied to sustain Petitioner's discharge upon this basis, as he was notified utilizing the administrative board procedures and waived all of his rights with the assistance of counsel. Finally, a discharge executed on this basis was normally under OTH conditions in accordance with Article 363020b of reference (c).

In addition to reviewing the circumstances of Petitioner's discharge for error or injustice at the time it was executed, 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, amongst other factors, that Petitioner's naval record was free of any misconduct for almost his first three years of service; that Petitioner had a favorable performance record despite his misconduct and had been selected for promotion to petty officer; the relatively minor and non-violent nature of Petitioner's misconduct, and the fact that he likely suffered from a substance abuse disorder; Petitioner's humble acceptance of responsibility for his misconduct and sincere statement of remorse; Petitioner's post-service record and academic, professional, and personal development, as well as his rehabilitative efforts and service in his community; the character references provided by Petitioner for review; 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 determined that equitable relief is warranted in the interests of justice. Specifically, the Majority found these mitigating factors to

who still suffer or are in need of advocacy and support. I went back to college at age 47 and graduated with a degree in Human Services. I have immensely enjoyed my new career and continue to do so.

I married in 2010 and can proudly say that my 14-year-old granddaughter has never seen me drink.

In closing, I know my marijuana usage in the Navy was wrong. I knew it then and I know it now. Perhaps the idea that many of my shipmates partook in this activity, or that it made my days, weeks, months at sea a little easier, or that at the time I didn't realize that I had and have a substance abuse disorder. I had no idea that I would be discharged and still go on to lead a life of alcoholism.

I truly believe that I will always have this affliction. It has taken me a long time to find myself again and I could not lead the wonderful life I have now without sobriety.

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sufficiently outweigh the severity of Petitioner's misconduct to justify the equitable upgrade of his characterization of service to general (under honorable conditions).

Although the Majority found the mitigating factors sufficient to justify the equitable relief described above, it did not find those mitigating factors to so significantly outweigh the severity of Petitioner's misconduct to justify the extraordinary relief of an upgrade to his characterization of service to fully honorable. In this regard, the frequency of Petitioner's in-service drug use even after being provided rehabilitation treatment, along with the fact that his illegal drug use continued for many years after his discharge from the Navy, weighed against such extraordinary relief.

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 his service ending on 4 January 1985 was characterized as "General (under honorable conditions)." All other entries reflected on 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 of 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 that there was insufficient evidence of any 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 potentially mitigating circumstances as did the Majority, but reached a different conclusion. Specifically, the Minority applied significantly more weight to the severity of Petitioner's misconduct than did the Majority. While not specifically separated on this basis, Petitioner's repeated drug abuse constituted a pattern of misconduct, and the severity of a pattern of misconduct is judged not based upon the individual acts but upon the collective impact of the pattern. In this regard, Petitioner was given multiple opportunities to correct his deficiencies, to include being provided substance abuse rehabilitation treatment, but simply refused to conform his conduct to that expected of a Sailor. The Minority also noted that Petitioner was already on a substance abuse surveillance program when he tested positive for the use of marijuana in 1983 and that he admitted to pre-service marijuana use. These facts suggest that Petitioner's drug use in the Navy was likely more extensive than his record reflects. In any case, Petitioner's commander described how Petitioner's conduct

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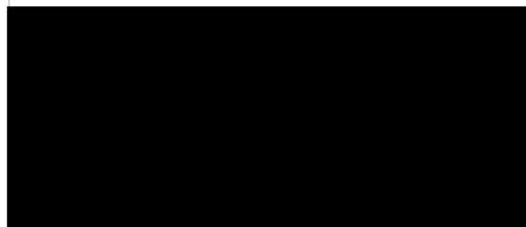
endangered his shipmates and the ship. Having found the severity of Petitioner's misconduct to outweigh all of the potentially mitigating factors, the Minority determined that equitable relief is not warranted in the interests of justice.

MINORITY RECOMMENDATION:

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

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 (d).

4/25/2025



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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 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.)
- _____ MAJORITY Recommendation Approved (with modification) (Grant Relief – I generally concur with the Majority conclusion that equitable relief is warranted given the totality of the circumstances, but do not believe that the Majority recommendation goes far enough to satisfy the interests of justice. Specifically, I found the mitigating circumstances to so significantly outweigh the severity of Petitioner’s misconduct to justify the removal of all stigmas associated with Petitioner’s discharge. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 4 January 1985 was characterized as “Honorable”; that his narrative reason for separation was “Secretarial Authority” (or the functional equivalent of this reason employed in 1985); that his separation authority was “MILPERSMAN 3630900”; that his separation code was “JFF1”; and that his reentry code was “RE-1.” Petitioner shall also be issued an Honorable Discharge Certificate.

