



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

[REDACTED]
Docket No. 9336-24

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

(c) MILPERSMAN 1910-140, Separation by Reason of Misconduct – Pattern of Misconduct

(d) MILPERSMAN 1910-304, Description of Characterization of Service

(d) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments

(2) DD Form 214

(3) NAVPERS 1070/607, Court Memorandum, 4 March 2005

(4) NAVPERS 1070/613, Administrative Remarks, 9 February 2005

(5) NAVPERS 1070/605, History of Assignments

(6) NAVPERS 1070/613, Administrative Remarks (NJP), 15 December 2005

(7) NAVPERS 1070/613, Administrative Remarks (Counseling), 15 December 2005

(8) NAVPERS 1070/607, Court Memorandum, 24 February 2006

(9) NAVPERS 1070/613, Administrative Remarks, 24 February 2006

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 2 December 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:

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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 25 October 2004. See enclosure (2).

d. On 9 February 2005, Petitioner received non-judicial punishment (NJP) for failure to obey a lawful order or regulation in violation of Article 92, Uniform Code of Military Justice (UCMJ).¹ His punishment consisted of 14 days of extra duties and restriction; the forfeiture of \$346.12 pay per month for one month; and reduction to the next inferior pay grade (E-2). See enclosure (3). He was formally counseled in writing regarding this conduct on the same day and warned that further conduct deficiencies may result in disciplinary action and/or in separation processing. See enclosure (4).

e. On 15 April 2005, Petitioner reported for his first duty assignment in the fleet onboard the [REDACTED]. See enclosure (5).

f. On 15 December 2005, Petitioner received his second NJP for unauthorized absence in violation of Article 86, UCMJ.² His punishment consisted of 10 days of extra duties and restriction, and reduction in rate to E-1.³ See enclosure (6). He was formally counseled in writing regarding this conduct on the same day and warned that further conduct deficiencies may result in disciplinary action and/or in separation processing. See enclosure (7).

g. On 24 February 2006, Petitioner received his third NJP for UA in violation of Article 86, UCMJ. His punishment consisted of 45 days of extra duties and restriction, and reduction in rate to E-1. See enclosure (8). He was formally counseled in writing regarding this conduct on the same day and warned that further conduct deficiencies may result in disciplinary action and/or in separation processing. See enclosure (9).

h. On 9 June 2006, Petitioner was discharged from the Navy under other than honorable (OTH) conditions for misconduct due to a pattern of misconduct.⁴ See enclosure (2).

i. Petitioner, through counsel, asserts that his discharge under OTH conditions was unduly harsh and that he has been therefore been improperly stigmatized. His counsel further asserts that Petitioner is repentant about his misconduct and proud of his military service, but haunted by

¹ This NJP was administered while Petitioner remained in his initial entry training at the [REDACTED].

² Petitioner was allegedly in a UA status from 29-30 November 2005.

³ The reduction in rate was suspended for six months.

⁴ Documentation regarding Petitioner's administrative separation process are absent from Petitioner's naval record. The presumption of regularity applies in the absence of evidence to the contrary to establish that naval authorities properly initiated and processed Petitioner's administrative separation, and that all procedural requirements were satisfied.

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his characterization of service. He asserts that his case is an example for which the guidance of reference (b) applies.

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 for misconduct due to a pattern of misconduct under OTH conditions when it was administered. In accordance with reference (c), an enlisted member of the Navy may be administratively separated for misconduct due to a pattern of misconduct when they have two or more NJPs during their current enlistment. Petitioner received NJP three times during his enlistment. The legitimacy of the underlying misconduct in question does not appear to be in controversy, as there is no evidence that he ever disputed the misconduct when his NJPs were administered and he does not do so in his current application. Applying the presumption of regularity as required by reference (e), the Board presumes that all procedural requirements were satisfied to sustain this discharge. Petitioner has provided no evidence, or even argument to the contrary. Reference (c) provides that the member must have violated a counseling warning prior to initiating processing for administrative separation based upon misconduct due to a pattern of misconduct, and the record reflects that Petitioner ignored two such warnings before he was so processed. Finally, reference (d) provides that an OTH characterization of service may be assigned for conduct involving one or more acts or omissions that constitute a significant departure from the conduct expected of members of the naval service. It also provides that a general (under honorable conditions) characterization of service is appropriate when the quality of the member's service has been honest and faithful, but significant negative aspects of the member's conduct or performance of duty outweighed the positive aspects of the member's service record. Petitioner had three acts that constituted a significant departure from the conduct expected of a Sailor in his record, and with three NJPs administered over the first 16 months of his service there was nothing honest and faithful about his service. Accordingly, the Majority found no error or injustice in Petitioner's discharge under OTH conditions. His contention that his discharge was unduly harsh and that he was improperly stigmatized is without merit.

In addition to reviewing the circumstances of Petitioner's discharge at the time it was administered for error or injustice, 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 each of the factors listed in reference (b). In particular, the Majority considered the relatively minor and non-violent nature of Petitioner's misconduct; the claim of Petitioner's counsel that Petitioner is repentant regarding his misconduct in the Navy; 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 some equitable relief is warranted in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be equitably upgraded to general (under honorable conditions).

Although the Majority found the mitigating circumstances sufficient to justify the equitable relief

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described above, it did not find those mitigating circumstances to be so compelling as to justify the extraordinary relief requested by Petitioner. The relative severity of a pattern of misconduct is judged not by the nature of the individual acts but rather upon collective nature of that pattern. Petitioner engaged in misconduct warranting NJP on three separate occasions during his first 16 months of service. On each occasion, he was warned that further misconduct may result in disciplinary action and/or administrative separation and was provided the opportunity to improve his conduct, but he failed to do so on each occasion. As such, Petitioner's pattern of misconduct was far more severe than the individual acts constituting the pattern and as he portrays it. The Majority also noted that Petitioner provided no evidence or even description of his post-service conduct and/or accomplishments upon which further equitable relief might be based. As such, the Majority found insufficient basis to grant the truly extraordinary relief that Petitioner requests by recharacterizing his OTH service as honorable. The Majority also found insufficient basis upon which to make any change to Petitioner's narrative reason for separation.

MAJORITY RECOMMENDATION:

Based upon the conclusions stated 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 9 June 2006 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 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's conclusion above that there was insufficient evidence of any error or injustice in Petitioner's discharge from the Navy for misconduct due to a pattern of misconduct 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 factors as did the Majority, but reached a different conclusion. Specifically, as the Majority noted above, the severity of Petitioner's misconduct was defined not by his individual acts of misconduct but rather by the collective nature of his pattern of misconduct. Given the frequency of Petitioner's misconduct over the course of such a short period, OTH is the only way to accurately characterize his service, and the Minority found the minimal mitigating factors in the record insufficient to justify any equitable relief. The Minority agreed with Petitioner that equitable relief in this regard may be warranted for applicants who exhibit positive character and

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rehabilitation. However, Petitioner provided no evidence of his positive character and/or rehabilitation. Nearly 20 years have passed since Petitioner's discharge from the Navy, but he provided no evidence or even a description of his post-service conduct and/or accomplishments upon which equitable relief might be granted. He did not even demonstrate or express remorse, as that was expressed by Petitioner's attorney on his behalf rather than by Petitioner himself. The Minority was certainly open to granting Petitioner equitable relief given the circumstances of this case, but was not willing to do so gratuitously without some minimal effort by Petitioner to demonstrate why he is worthy of such consideration. In this regard, the Minority noted that Petitioner is entitled to request reconsideration of the Board's decision upon the presentation of new material not previously presented to or considered by the Board in accordance with reference (a), and would encourage him to do so after gathering material upon which the equitable relief that he seeks may be based.

MINORITY RECOMMENDATION:

Based upon the conclusions stated 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 (e).

4/12/2025



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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 corrective action recommended by the Majority above.)

X 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 Approve (Grant Relief – I generally concur with the Majority’s conclusion that equitable relief is warrant based upon the totality of the circumstances, but I do not believe that that Majority’s recommendation goes far enough to serve the interests of justice. Specifically, I found that the mitigating factors did so significantly outweigh the severity of Petitioner’s misconduct to justify the relief that he seeks. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 9 June 2006 was characterized a “Honorable”; that the narrative reason for his separation was “Secretarial Authority”; that his separation authority was “MILPERSMAN 1910-164”; that his separation code was “JFF”; and that his reentry code was “RE-1.” Petitioner shall also be issued an Honorable Discharge Certificate.”

[REDACTED]