



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

[REDACTED]
Docket No. 10220-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) 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
(c) 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
(d) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) DD Form 1966, Record of Military Processing – Armed Forces of the United States, 6 February 1996
(3) DD Form 214
(4) NAVPERS 1070/605, History of Assignments
(5) [REDACTED] XO Memo to File, subj: Discussion with [Petitioner], 11 May 1999
(6) Nurse's Note (re: Petitioner's wife's pregnancy history), 29 April 1999
(7) Red Cross Message, subj: Navy [REDACTED], dtg [REDACTED] May 1999
(8) [REDACTED] COB Memo, subj: Memorandum of Record, 11 May 1999
(9) [REDACTED] Memo [REDACTED] subj: Memorandum for the Record ICO [Petitioner] as as [sic] Directed by the Commanding Officer, 11 May 1999
(10) [REDACTED] CO Memo 8210 Ser 739B/088, subj: Personnel Action ICO [Petitioner], 11 May 1999
(11) NAVPERS 1626/7, Report and Disposition of Offense(s), 14 May 1999
(12) Standard Form 513, Medical Record – Consultation Sheet, 15 May 1999
(13) [REDACTED] PRP Certifying Official Memo, subj: Notification of Permanent Decertification from the Personnel Reliability Program (PRP), 3 June 1999
(14) [REDACTED] CO Memo 5510 Ser SSBN743B/202, subj: [Petitioner]; Personnel Reliability Program Decertification, 21 June 1999
(15) Administrative Separation Processing Notice – Administrative Board Procedure, 8 July 1999

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- (16) Administrative Discharge Board Findings Worksheet (Excerpt)
- (17) Standard Form 93, Report of Medical History, 9 November 1999
- (18) [REDACTED] Memo 1910 Ser 02L/616, subj: Authorization for Separation by Reason of Misconduct due to Commission of a Serious Offense ICO [Petitioner], 10 November 1999
- (19) Department of Veterans Affairs Rating Decision, 28 February 2024
- (20) BCNR Memo Docket No. 10220-24, subj: Advisory Opinion ICO [Petitioner], 18 February 2025
- (21) Petitioner's Attorney's Letter, Re: [Petitioner's] Response to Advisory Opinion, 17 April 2025

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"; that his narrative reason for separation be changed to "Secretarial Authority"; and that his reentry code be changed to "RE-1."

2. The Board reviewed Petitioner's allegations of error and injustice on 9 May 2025 and, pursuant to its governing policies and procedures, determined by a majority vote that the corrective action indicated below should be taken upon 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 references (b) and (c).

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 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 consider Petitioner's application on its merits.

c. On 6 February 1996, Petitioner was granted an enlistment waiver due to his self-reported pre-service marijuana use. See enclosure (2).

d. Petitioner enlisted in the U.S. Navy pursuant to the waiver referenced in paragraph 3c above and commenced a period of active duty service on 18 March 1996. See enclosure (3).

e. Petitioner reported for duty aboard the [REDACTED] on 6 September 1998. See enclosure (4). He was subsequently detailed to the [REDACTED] to supplement the crew for an operational mission. See enclosure (5).

f. Upon reporting to the [REDACTED], Petitioner presented the command with a note from his pregnant wife's nurse indicating that his wife, who was at the time nine weeks pregnant, had complications during her previous three pregnancies and requesting that the command take this factor into consideration when determining whether Petitioner should deploy. Upon receipt

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of this message, the [REDACTED] Medical Officer contacted the office of Petitioner's wife's physician and learned that she was stable and that her condition did not warrant relieving Petitioner of his operational mission requirements. See enclosures (5) and (6).

g. On 3 May 1999, Petitioner's command received a Red Cross message which reiterated the information provided in the note referenced in paragraph 3f above. The message specifically stated that there was no emergency and that Petitioner's wife's doctor indicated that hers was not a high-risk pregnancy. See enclosure (7).

h. On 5 May 1999, the [REDACTED] Executive Officer (XO) discussed the upcoming deployment with Petitioner. Petitioner reportedly expressed his concern regarding his wife's condition and anguish for having to go to sea. He felt that she needed him at home to care for her and her three other children. The XO informed Petitioner that his situation did not warrant relieving him of his duty to deploy to sea. See enclosure (5).

i. On or about 10 May 1999, Petitioner reported to a fellow shipmate that he felt mentally unstable and was contemplating hurting himself to avoid his deployment, and that "all he wanted to do was get off this submarine." When he was informed that such statements could adversely affect his Personnel Readiness Program (PRP) status and his career, he reportedly claimed that it did not matter to him. Arrangements were then made for Petitioner to speak to the [REDACTED] commander. See enclosures (8) and (9).

j. By memorandum dated 11 May 1999, the [REDACTED] commander removed Petitioner from the PRP program and recommended Petitioner for a competency for duty evaluation and assessment of his potential for further submarine and naval service. Specifically, he reported feeling that he had no choice but to remove Petitioner from the PRP based upon Petitioner's statements about being unable to concentrate on his work, disturbed sleep patterns, feeling "mentally unstable" and consideration of intentional self-harm. See enclosure (10).

k. On 14 May 1999, Petitioner was charged with two specifications of disobeying lawful orders in violation of Article 92, Uniform Code of Military Justice (UCMJ),¹ and malingering in violation of Article 115, UCMJ.² See enclosure (11).

l. On 15 May 1999, Petitioner was diagnosed with an adjustment disorder with anxiety. The identified stressors in the medical record documenting this diagnosis were his wife's pregnancy with complications and work problems. See enclosure (12).

m. On 18 May 1999, Petitioner received non-judicial punishment (NJP) for the malingering charge referenced in paragraph 3k above.³ He was reduced to the next inferior paygrade,

¹ Petitioner was charged with disobeying an order to report to medical daily for blood pressure measurement and medication dispensing on 11 May 1999

² Petitioner was charged with feigning illness by stating to several persons between 5-11 May 1999 that he had been thinking of ways to get out of making patrol "by intentionally falling down a ladder and breaking a leg or cutting his head open" for the purpose of avoiding sea duty."

³ The two specifications of disobeying lawful orders in violation of Article 92, UCMJ, were dismissed.

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required to forfeit \$833.20 pay per month for two months, and received an oral reprimand. See enclosure (11).

n. On 18 May 1999, Petitioner was formally notified of his temporary decertification from the PRP, removed from the [REDACTED], and transferred to Commander, [REDACTED]. However, he subsequently refused to submit any statement in response. See enclosures (13) and (14).

o. By memorandum dated 21 June 1999, Petitioner was permanently decertified for duty under the PRP. See enclosure (14).

p. On 8 July 1999, Petitioner was formally notified via the administrative board procedures that he was being processed for administrative separation from the Navy for misconduct due to commission of a serious offense. See enclosure (15).

q. On 12 July 1999, Petitioner acknowledged receipt of the notification referenced in paragraph 3o above and elected to exercise his right to a hearing before an administrative discharge board. See enclosure (15).

r. An administrative discharge board was convened on 10 September 1999 and unanimously recommended that Petitioner be discharged from the Navy under other than honorable (OTH) conditions for misconduct due to commission of a serious offense. See enclosure (16).

s. Petitioner underwent a separation physical examination on 9 November 1999 at which he was found to be fit for separation. He confirmed “depression or excessive worry” in his medical history report completed in conjunction with this examination, explaining that he experienced anxiety symptoms related to his wife’s pregnancy complications. See enclosure (17).

t. By memorandum dated 10 November 1999, the separation authority directed that Petitioner be discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (18).

u. On 15 November 1999, Petitioner was discharged from the Navy under OTH conditions for misconduct due to commission of a serious offense. See enclosure (3).

v. On 28 February 2024, the Department of Veterans Affairs (VA) granted Petitioner service connection for treatment purposes only for a generalized anxiety disorder (GAD).⁴ See enclosure (19).

w. Petitioner asserts that he was not malingering. Rather, he struggled with anxiety related to his wife’s pregnancy complications. In support of this claim, he provided a legal brief prepared by his attorney arguing that Petitioner’s conduct did not meet the elements for malingering in violation of Article 115, UCMJ. At worst, his attorney argued, his conduct could be interpreted as attempted malingering, but that such an attempt would be explained by his anxiety disorder and the circumstances surrounding his wife’s pregnancy. Petitioner reports that

⁴ The VA found that no single instance of misconduct may support the “willful and persistent misconduct” bar to VA benefits under 38 C.F.R. §3.12(d)(2)(ii).

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he continued to suffer from anxiety symptoms after his discharge, and that he used illicit drugs to self-medicate for these symptoms. He also reported having gone to prison twice since his discharge, but that he hasn't used any since going to prison in 2008.⁵ Petitioner's application is supported by several statements and/or character references from his children, former shipmates from the [REDACTED], his employer, and two other colleagues. See enclosure (1).

x. Because he based his request for relief in whole or in part upon his claimed mental health condition, Petitioner's application and records were reviewed by a licensed clinical psychologist who provided an AO for the Board's consideration. The licensed clinical psychologist noted that the record reflects that Petitioner experienced anxiety and/or apprehension about deploying/going to sea, but that he also exhibited symptoms and behaviors characteristic of malingering as evidenced by talking to fellow shipmates about ideas/ways to get out of going to sea, and non-compliance with medical recommendations/follow-up. She noted that malingering is not necessitated by anxiety but rather is more characterological in nature. It was this psychologist's clinical opinion that there is sufficient evidence that Petitioner suffered from post-service mental health conditions and that his malingering may have been prompted, but not caused by, anxiety symptoms. However, she found insufficient evidence to attribute Petitioner's misconduct to a mental health condition. See enclosure (20).

y. By letter dated 17 April 2025, Petitioner's attorney provided a response to the AO referenced in paragraph 3x above for the Board's consideration. He argued, contrary to the AO's findings, that "[i]t is understandable that any man would react the way that [Petitioner] did, especially considering his confirmed mental health conditions which can affect the way he reacted to a stressful life-event." His attorney also reiterated that Petitioner only said that he was thinking about hurting himself to avoid duty; he never said anything more extreme, nor did he actually attempt to hurt himself, and he raised these concerns to his proper chain of command. Finally, Petitioner's attorney suggested that Petitioner's post-service mental health history demonstrates that he reacts poorly to stressful situations. See enclosure (21).

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 merit in Petitioner's contention that his conduct did not constitute malingering in violation of Article 115, UCMJ. Petitioner did more than simply "think about" hurting himself. Rather, he said that he was thinking of ways to hurt himself to get out of his duties, without any intent to actually do so, and indicated that he would continue to make such statements until he achieved this goal. In other words, he made statements intentionally exaggerating the symptoms of a mental illness to avoid deploying to sea as was his duty. Such conduct satisfies the elements of malingering in violation of Article 115, UCMJ. The Board also notes that Petitioner's attorney conceded that Petitioner's conduct could be interpreted as "attempted malingering," and that attempts are punishable to the same extent under the UCMJ as are the underlying offenses.

⁵ Medical records provided by Petitioner reflect that he was in prison for more than eight years for drug-related charges, to include selling drugs.

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Besides finding that the limited evidence in the record supported the offense of malingering in violation of Article 115, UCMJ, the Majority also found that Petitioner's opportunity to legitimately challenge the validity of this misconduct has long since passed. In the absence of evidence to the contrary, the Board is obligated to apply the presumption of regularity to the actions of naval officials. Accordingly, the Board presumes that the malingering charge reflected in Petitioner's naval record was correct, and it is Petitioner's burden to prove otherwise. The Board also presumes in the absence of evidence to the contrary that the commander who adjudicated this malingering charge in 1999 carefully weighed all of the evidence presented by Petitioner before finding him guilty. His decision to dismiss the two charged violations of Article 92, UCMJ, suggests that he took this responsibility seriously and exercised discretion in this regard. Petitioner made essentially the same argument against the malingering charge in 1999 without success as he has made to the Board in his current application, and other than the irrelevant evidence of his later GAD diagnosis has provided this Board with no evidence of his claim in this regard than he provided to his commander at the time. The Majority notes that Petitioner's commander at the time had access to all of the information which resulted in this charge at the time, some of which may not be present in his 26-year old naval record. The Majority also notes that Petitioner had the opportunity to refuse NJP and to therefore force the command to prove his misconduct beyond a reasonable doubt at a court-martial but elected not to do so. Accordingly, Petitioner voluntarily accepted the judgment of his commander at the time, and after the passage of more than 25 years he has a considerable burden to prove an error in that judgment which he did not approach.

Because Petitioner based his request for relief in whole or in part upon his claimed mental health condition, his application was reviewed in accordance with the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition and its potential effect upon the misconduct for which Petitioner was discharged. In this regard, the Board did not question that Petitioner suffered anxiety symptoms during his naval service. Regardless of whether those symptoms had progressed to a GAD during his service, Petitioner's extreme anxiety was apparent in his excessive worry for his wife's condition despite the weight of medical evidence suggesting that his concerns were unwarranted and his obsessive desire to avoid going to sea. While having no doubt that Petitioner suffered from extreme anxiety during his naval service, even with the application of liberal consideration the Majority did not find this anxiety to excuse or mitigate Petitioner's misconduct. As was stated in the AO at enclosure (20), malingering is not necessitated by anxiety and is characterological in nature. Every Sailor experiences anxiety and most have personal concerns that conflict with their duty to deploy, but very few refuse to do their duty despite those concerns. The Majority simply found no logical nexus between Petitioner's anxiety symptoms and his malingering offense. It was not anxiety which prompted him to repeatedly make comments regarding specific ideas to hurt himself to avoid deployment.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and its potential impact upon the misconduct for which he was discharged in accordance with reference (b), 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 (c). In this regard, the Majority considered, amongst other factors, that Petitioner's misconduct was apparently motivated by a sincere concern for his wife; the non-violent and relatively minor

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nature of Petitioner's misconduct; the character references provided with Petitioner's application attesting to his work ethic and sense of responsibility; Petitioner's extended period of employment since being released from prison; Petitioner's claim to have remained drug free since his second post-service prison sentence; 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 the combined weight of these mitigating factors to sufficiently outweigh the severity of Petitioner's misconduct to justify the equitable upgrade of his discharge characterization of general (under honorable conditions).

Despite finding the combined weight of the mitigating factors sufficient to justify the equitable relief described above, the Majority did not find those mitigating factors to so significantly outweigh the severity of Petitioner's misconduct such as to justify the extraordinary relief that he requests. In this regard, the Majority noted that Petitioner's misconduct, while non-violent in nature, was of a type which was likely to have significant adverse effects upon the readiness and morale of the [REDACTED]. By taking action to remove himself from the crew of the [REDACTED] on the eve of its impending operational mission, Petitioner caused either another Sailor to be deployed on short notice in his place or for the remaining crew to cover his duties during the deployment. Either way, Petitioner's selfish misconduct had a detrimental effect upon other Sailors and the readiness of the U.S. Navy which weighed heavily against his truly extraordinary requested relief of an honorable discharge.

MAJORITY RECOMMENDATION:

Based upon its conclusions as discussed 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 15 November 1999 was characterized as "General (under honorable conditions)." All other entries reflected on Petitioner's current DD Form 214, as modified by his DD Form 215 issued 16 June 2023, are to remain unchanged.⁶

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 corrective action.

The Minority concurred with the Majority conclusion above in all regards except for the finding that the mitigating circumstances sufficiently outweighed the severity of Petitioner's misconduct to justify the equitable relief recommended by the Majority. In particular, the Minority found the

⁶ The Majority recommends that the correction reflected on Petitioner's DD Form 215 be incorporated into his newly-issued DD Form 214.

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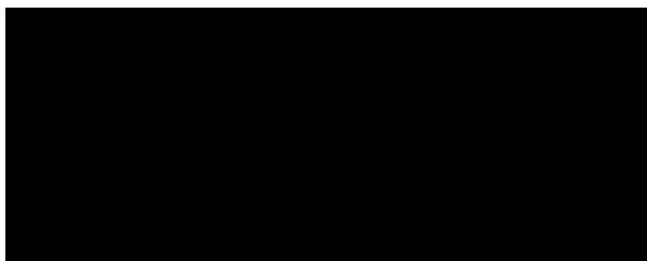
mitigating factors to be overwhelmingly offset by Petitioner's post-service conduct. Since being discharged from the Navy for misconduct due to commission of a serious offense, Petitioner was arrested and incarcerated by civilian authorities twice. The latter of these two arrests resulted in an extended prison sentence of over eight years for drug-related offenses, to include selling drugs. In accordance with reference (c), the Board should consider post-service conduct, including any arrests, criminal charges, or any convictions since the incident at issue, when determining whether to grant relief on the basis of an injustice.⁷ While the Minority was unaware of the details of Petitioner's post-service criminal conduct, a prison sentence of more than eight years is indicative of egregious misconduct which weighs heavily against granting purely equitable relief and severely undermines Petitioner's rehabilitation claims. Such post-service conduct, combined with the adverse effect that Petitioner's misconduct undoubtedly had upon the readiness and morale of the [REDACTED] upon embarking on an operational mission, convinced the Minority that no equitable relief is warranted in the interests of justice.

MINORITY RECOMMENDATION:

Based upon its conclusions as discussed 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).

9/8/2025



⁷ See paragraph 7d. The Minority acknowledges that this provision states that "[p]ositive or negative *post-conviction* conduct" should be considered, but considered this proviso to be the product of reference (c)'s focus upon clemency relief from the consequences of court-martial convictions. Applying its guidance to other types of corrections in accordance with paragraph 4 of reference (c) logically extends the guidance of paragraph 7d to cases in which there was no underlying court-martial conviction.

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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 Approved (Full Relief – I generally concur with the Majority’s conclusion that equitable relief is warranted based upon 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 found the combined weight of the mitigating factors to so significantly outweigh the severity of Petitioner’s misconduct to justify the corrective action that he requested. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 15 November 1999 was characterized as “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.” The correction reflected in Petitioner’s previously issued DD Form 215 should be incorporated into this new DD Form 214. Petitioner shall also be issued an Honorable Discharge Certificate.”

