



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

[REDACTED]  
Docket No. 11682-24  
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) NAVPERS 15560B, Naval Military Personnel Manual, 1987  
(d) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments  
(2) NAVCRUIT 1133/7, USN Alcohol and Drug Abuse Screening Certificate,  
22 May 1989  
(3) DD Form 214  
(4) NAVPERS 1070/609, Enlisted Performance Record, 22 May 1991  
(5) [REDACTED] [REDACTED] CO Memo 1910 N03, subj: Notice of a Notification  
Procedure Proposed Action, 8 May 1991  
(6) OPNAV 8827/2, Department of the Navy Voluntary Statement, 9 May 1991  
(7) Petitioner's Memo, subj: Statement of Awareness and Request for, or Waiver of,  
Privileges, 9 May 1991  
(8) [REDACTED] [REDACTED] CO Memo 1910 N03, subj: [Petitioner]; Recommendation  
for Separation by Reason of Defective Enlistment and Induction Due to Fraudulent  
Entry into the Naval Service, 29 May 1991

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.
2. The Board reviewed Petitioner's allegations of error or injustice on 7 April 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. 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. On 24 May 1988, Petitioner completed the U.S. Navy Alcohol and Drug Abuse Screening Certificate pursuant to his enlistment in the Navy through the Delayed Entry Program, in which he explicitly denied any previous marijuana use while acknowledging that this statement would be used to determine his eligibility for enlistment. See enclosure (2).
- d. On 22 May 1989, Petitioner commenced a period of active duty service in the Navy pursuant to the enlistment referenced in paragraph 3c above. See enclosure (3).
- e. On 24 May 1989, Petitioner recertified his original disclosures in the drug abuse screening referenced in paragraph 3c above. Specifically, he stated that he "recertif[ied] that [he had] completed this form honesty [sic], without concealing any information, and of [his] own free will." See enclosure (2).
- f. On 23 July 1990, Petitioner received non-judicial punishment for an unspecified offense.<sup>1</sup> See enclosure (4).
- g. By memorandum dated 8 May 1991, Petitioner was formally notified via the notification procedures that he was being considered for administrative separation from the Navy by reason of defective enlistment and induction due to fraudulent entry into the naval service as evidenced by false statements made at the time of his enlistment that he had never used any controlled substances, specifically marijuana.<sup>2</sup> See enclosure (5).
- h. On 9 May 1991, Petitioner signed a statement acknowledging that his enlistment in the Navy was fraudulent because he had failed to disclose his prior marijuana use. See enclosure (6).
- i. By memorandum dated 9 May 1991, Petitioner acknowledged receipt of the notification referenced in paragraph 3g above and waived all of his rights with regard to the administrative separation process. He also indicated that he did not object to the proposed separation. See enclosure (7).
- j. On 22 May 1991, Petitioner was administratively separated from the Navy under honorable conditions for fraudulent entry with a general discharge. See enclosure (3).
- k. By memorandum dated 29 May 1991, Petitioner's commander reported Petitioner's discharge for defective enlistment and induction due to fraudulent entry in the naval service in

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<sup>1</sup> Petitioner's naval record does not include any documentation specific to this NJP. It is recorded only in his performance record without any amplifying details.

<sup>2</sup> Petitioner had admitted to his ship's Executive Officer that he had used marijuana prior to enlisting in the Navy. See enclosure (6).

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accordance with reference (c). He noted in this report that Petitioner "had no interest in remaining in the naval service." See enclosure (8).

1. Petitioner contends he was informed upon discharge that he could request an upgrade to his discharge to honorable "within a certain number of years as long as [he] maintained a clean record," and that he has done so for more than 32 years since his discharge. Petitioner provided no supporting documentation with his application. 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 in Petitioner's general discharge for defective enlistment and induction due to fraudulent entry into the naval service based upon his false statements made at the time of his enlistment regarding his prior marijuana use. In accordance with paragraph 3630100 of reference (c), an enlisted Sailor could be separated on the basis of procurement of a fraudulent enlistment through any knowingly false representation or deliberate concealment in regard to any of the qualifications or disqualifications prescribed by law, regulation, or orders for the respective enlistment. Petitioner admitted that he falsely represented his prior drug use during his enlistment process, which concealed a potentially disqualifying factor. There does not appear to be any procedural defects in Petitioner's administrative separation on this basis, as paragraph 3630100.3a of reference (c) provided that the notification procedures shall be used for separations on this basis and Petitioner was properly notified and waived all of his rights in the administrative separation process. Finally, Petitioner's characterization of service appears proper since paragraph 3630100.2 of reference (c) provided that discharges under this basis shall be characterized a "General or Entry Level Separation," subject to a limited exception not applicable in this case which would authorize discharge under other than honorable conditions. As such, Petitioner received the most favorable characterization of service authorized under the circumstances.

In addition to reviewing the circumstances of Petitioner's discharge for fraudulent enlistment for error, 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 appears to have served otherwise honorably for two years; it appears that the Navy became aware of the circumstances of Petitioner's fraudulent enlistment through his own disclosure to his ship's Executive Officer; the absence of any details in Petitioner's naval record regarding the misconduct for which he reportedly received NJP; Petitioner's overall performance average of 3.4 as reflected in enclosure (4); Petitioner's relative youth and immaturity at the time of his fraudulent enlistment; and the passage of time since Petitioner's discharge. The Majority found these mitigating factors sufficient to justify the equitable upgrade of Petitioner's characterization of service in the interests of justice.

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**MAJORITY RECOMMENDATION:**

Based upon its conclusion as discussed above, the Majority of the Board recommended 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 22 May 1991 was characterized as "Honorable." All other entries reflected on Petitioner's current DD Form 214, to include the narrative reason for separation, 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 corrective action to Petitioner's naval record.

The Minority concurred with the Majority conclusion that there was no error in Petitioner's general discharge due to fraudulent enlistment.

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, the Minority simply found that Petitioner failed to satisfy his burden to establish that the characterization of his discharge represents an injustice under the circumstances. Petitioner provided the Board with no evidence, or even narrative, regarding his activities since his discharge which would justify the extraordinary relief that he seeks. Rather, he stated simply that he has maintained a clean record since his discharge without any evidence or explanation regarding what he has accomplished in those years. The Minority was certainly open to granting equitable relief if Petitioner demonstrated that such relief is warranted but was unwilling to gratuitously grant it without a reasonable basis. In the Minority's opinion, to do otherwise would establish a dangerous precedent that discharges should be upgraded based solely on the passage of time, which is not intended to be the standard. In accordance with reference (a), Petitioner is entitled to request reconsideration of this decision upon the presentation of material not previously presented to or considered by the Board. In recommending that Petitioner's current request for relief be denied, the Minority would encourage Petitioner to seek reconsideration of that decision while providing evidence of his activities and accomplishments since his discharge to provide a rational basis for corrective action that he seeks.

**MINORITY RECOMMENDATION:**

Based upon its conclusion as discussed above, the Minority of the Board recommended that no corrective action be taken on Petitioner's naval record.

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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. In accordance with Section 6e(1)(b) of enclosure (1) to reference (d), the foregoing action of the Board is submitted for your review and action.

7/10/2025



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

       MAJORITY Recommendation Approved (Grant 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.)

