



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

[REDACTED]
Docket No. 672-25
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Advisory Opinion (AO), 25 May 25
(3) Rebuttal to AO, undated
(4) DD Form 214, ending on 25 Feb 91
(5) NAVMC 118 (11), Administrative Remarks, 28 Aug 87
(6) NAVMC 118 (12), Offenses and Punishments, 19 Oct 88
(7) NAVMC 118 (12), Offenses and Punishments, 1 Mar 89
(8) NAVMC 118 (12), Offenses and Punishments, 13 Sep 89
(9) SPCM Order and Action Number 381-89
(10) Supplementary Action and SPCM Order Number 12-91

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 that his narrative reason for separation and separation code be changed to reflect a Secretarial Authority discharge.

2. The Board reviewed Petitioner's allegations of error or injustice on 11 July 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 references (b) through (e). Additionally, the Board considered enclosure (2), the advisory opinion (AO) furnished by qualified mental health provider, and enclosure (3), Petitioner's response to the AO.

3. Having reviewed all the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board finds 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, the statute of limitation was waived in accordance with reference (d).
- c. Petitioner enlisted in the Marine Corps and began a period of active duty service in December 1986. See enclosure (4).
- d. On 28 August 1987, Petitioner was issued administrative counseling documenting his lost rifle card and informing him that failure to take corrective action could result in separation or judicial proceedings. See enclosure (5).
- e. On 19 October 1988, Petitioner accepted nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 86, due to an unauthorized absence (UA) of approximately 15 hours, and Article 92, for disobeying an order directed by a sergeant to clean a water tank. See enclosure (6).
- f. On 1 March 1989, Petitioner received a second NJP for two additional Article 86 offenses, a five day UA and failure to go to a change of command ceremony, as well as an offense under Article 112 for being drunk on duty. See enclosure (7).
- g. In July 1989, Petitioner commenced a series of minor UAs that were terminated with voluntary his return to military authority. His last period of UA commenced on 31 July 1989 and terminated on 7 September 1989. See enclosure (8).
- h. On 20 October 1989, Petitioner was tried by Special Court-Martial (SPCM) for five specifications under Article 86 and three specifications under Article 91. He pleaded guilty to a single charge and specification under Article 86 for his last period of UA and to two specifications charged under Article 91 for disobeying a lawful order of a gunnery sergeant and for being disrespectful in language and deportment toward the same. He pleaded not guilty to the remainder of the charges and specifications and was found not guilty consistent with his pleas. He was sentenced to reduction to the paygrade of E-1, confinement with forfeitures of pay for 2 months, and a Bad Conduct discharge (BCD). See enclosure (9).
- i. Petitioner waived his right to have his case considered by the Naval Clemency and Parole Board on 27 October 1989. See enclosure (10).
- j. The U.S. Navy-Marine Corps Court of Military Review affirmed the findings and sentence of Petitioner's SPCM on 23 April 1990. The Court of Military Appeals subsequently denied his petition for a grant of review. See enclosure (10).
- k. Petitioner's punitive discharge was ordered executed and his BCD was issued 25 February 1991. See enclosures (4) and (10).

1. Petitioner contends that his post-service character and accomplishments warrant consideration of an upgraded characterization of discharge. He states that he began working as a licensed water treatment operator after his discharge, initially working for local government until beginning work in the private sector in 2017 with the Campbell Soup company. He states that he served well during his detachments and exercises but got into trouble in garrison, primarily due to excessive drinking at the E-Club. He was a perfect Marine until he asked to be sent to Japan and it fell through, after which he started using methamphetamines and, in his gunnery sergeant's words, went "from a model Marine to a shitbird." He believes that his alcohol use disorder should receive liberal consideration in accordance with reference (d). He provided context regarding his Article 91 offenses, stating that he got into an argument with his gunnery sergeant about not being able to go to Japan. He submitted two letters of recommendation as evidence that, post-discharge, he has made the most of his Marine Corps training by helping to serve his community and as evidence of his 20 years of sobriety. See enclosure (1).

m. Because Petitioner contends in part that a mental health condition contributed to the circumstances of his misconduct and punitive discharge. The Board also considered enclosure (2), the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with or suffered from any mental health conditions while in service. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and mental health condition. Additional records (active duty medical records, post-service medical records that mention diagnoses, symptoms related to in-service misconduct) would help to render a more favorable decision.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that occurred in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

n. In response to the AO, Petitioner submitted enclosure (3), which consisted of additional arguments in support of his application. In particular, Petitioner argues that his alcohol abuse was the root cause of his misconduct and the Marine Corps failed to treat him with compassion.

MAJORITY CONCLUSION

Upon careful review and consideration of all the evidence of record, the Majority of the Board determined that partial relief is warranted.

The Majority found no error in Petitioner's punitive discharge when it was issued and noted that his petition for further review of the findings and sentence of his SPCM proceedings was denied. Further, in addition to the SPCM conviction, he had already received two NJPs and corrective administrative counseling that established a pattern of misconduct. Petitioner also admits that he began to behave problematically, including the use of controlled substances, in response to being denied the opportunity to serve in Japan.

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However, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with references (b) through (e) on the basis of liberal consideration or clemency. In this regard, the Majority considered, amongst other factors, the totality of Petitioner's naval service, which appears to have been Honorable and without any significant adverse incidents for nearly two years before his misconduct began. Additionally, although the Majority concurred with the clinical conclusion of the AO, it considered favorable clemency factors that included the non-violent nature of Petitioner's misconduct, his sincere statement of remorse, his post-service record of employment in the water treatment service field, his demonstrated his resiliency to succeed in spite of the stigma associated with his punitive discharge, and his service to his community. The Board also took into consideration the character references provided 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 factors, the Majority determined that equitable relief is warranted in the interests of justice. Specifically, the Majority found these mitigating factors sufficient to justify an upgrade of Petitioner's characterization of service to General (Under Honorable Conditions).

Although the Majority found the mitigating circumstances sufficient to justify the equitable relief described above, it did not find those mitigating circumstances sufficient to justify the extraordinary relief that Petitioner requests. In this regard, the Majority found that, although the positive aspects of Petitioner's active duty service outweighed the negative aspects sufficiently to warrant an upgrade of his punitive discharge to a GEN characterization of service, his record was not otherwise so meritorious that an Honorable characterization would be appropriate. Further, based on the nature of Petitioner's misconduct, the Majority found that his narrative reason for separation and separation code remain appropriate. As noted above, Petitioner was UA on at least three occasions, failed to obey orders on two separate occasions, behaved disrespectfully toward his gunnery sergeant, and was drunk on duty. Although the Majority found Petitioner's punitive discharge unduly harsh with respect to his in-service and post-service clemency factors, the totality of his misconduct sufficiently offset the mitigating factors weighing in favor of full relief. Ultimately, the Majority concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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 Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending on 25 February 1991, he was discharged with a "General (Under Honorable Conditions)" characterization of service. All other entries reflected on Petitioner's current DD Form 214 shall 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 error or injustice warranting equitable relief.

The Minority concurred with the Majority's conclusion that there was insufficient evidence of any error or injustice in Petitioner's discharge 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 references (b) through (e). In this regard, the Minority considered the same potentially mitigating factors but reached a different conclusion. Specifically, the Minority applied more weight to the severity and repeated nature of Petitioner's misconduct than did the Majority. While none of Petitioner's individual acts of misconduct were particularly egregious, when taken in totality they are quite severe and undoubtedly would have created a significant challenge for Petitioner's command. In fact, Petitioner himself described the significant decline in his behavior due to resentment after he learned he would not be stationed in Japan. The Minority also noted that Petitioner's misconduct was apparently even more severe than reflected in his record; as evidenced by his admission to methamphetamine abuse¹ during the period of decline in his in-service conduct. As a result, the Minority concluded that Petitioner's reason for separation and punitive discharge remains appropriate. Ultimately, the Minority found the severity of Petitioner's misconduct far outweighed the mitigating circumstances and, therefore, 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.

8/1/2025



¹ Petitioner also may have admitted to using other controlled substances in addition to methamphetamines. He stated "I started using meth and *whatever else I could find.*" [emphasis added]

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- X MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by Majority above.)
- ___ MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that Petitioner's punitive discharge, reason for separation, and separation code shall remain unchanged.)

