



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

[REDACTED]
Docket No. 683-25
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [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) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 September 1997
(d) NAVPERS 15560C, Naval Military Personnel Manual, 15 August 1991

Encl: (1) DD Form 149, 13 January 2025 (w/attachments)
(2) DD Form 214
(3) NAVPERS 1070/605, History of Assignments
(4) Petitioner's Personnel Record Excerpt (Unauthorized Absence)
(5) NAVPERS 1070/602, Record of Emergency Data

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 a discharge upgrade.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 11 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 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).

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 limitation and review Petitioner's application on its merits.

¹ Petitioner did not specify the upgrade requested.

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c. Petitioner enlisted in the U.S. Navy and began a period of active-duty service on 25 June 1997. He was approximately one month shy of his 18th birthday when he entered active duty. See enclosure (2).

d. Upon completion of his initial entry training, Petitioner reported for his first duty assignment aboard the [REDACTED] on 16 October 1997. The [REDACTED] was homeported at [REDACTED]. See enclosure (3).

e. On 3 November 1997, Petitioner commenced a period of unauthorized absence (UA) which continued until on or about 15 December 1997. See enclosure (4).

f. On 19 February 1998, Petitioner was discharged from the Navy under other than honorable (OTH) conditions in lieu of trial by court-martial.² See enclosure (2).

g. Petitioner asserts that he went UA for fear of losing his newborn child. Specifically, he claims to have enlisted when his child was four months old with the mistaken understanding that his family would be able to accompany him at his first duty assignment,³ and that he went UA after learning that that was not the case and the child's mother, to whom Petitioner was not married, threatened to put the child up for adoption since she was unable to care for him alone. As such, he felt that he had to return home. His application is supported by character references from an official from his local school district and from his pastor, attesting to his favorable character and service within his community; a letter from his child attesting to his favorable qualities as a father; and several certificates reflecting his qualifications as a food handler and incorporation of a catering business. 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 insufficient evidence of any error in Petitioner's discharge under OTH conditions. His misconduct is not in controversy, as it was documented in Petitioner's naval record and Petitioner acknowledged the UA while explaining his motivation. In accordance with paragraph 3630650.1a of reference (d), a Sailor could be separated in lieu of trial by court-martial upon the Sailor's request if charges were preferred with respect to an offense for which a punitive discharge was authorized. Since Petitioner's UA was for a period of more than 30 days,

² Petitioner's naval record did not include documentation of his administrative separation process. However, his DD Form 214 reflects that he was discharged under OTH conditions in lieu of trial by court-martial. In the absence of evidence to the contrary, the Board is obligated by reference (c) to apply the presumption of regularity to the actions of naval authorities. Accordingly, based upon the indication on his DD Form 214 that Petitioner's discharge was "in lieu of trial by court-martial," the Board presumes that he was charged with UA in violation of Article 86, Uniform Code of Military Justice, and subsequently submitted a voluntary request for discharge in lieu of trial by court-martial which was approved by proper authority. The Board also presumes in the absence of evidence to the contrary that all procedural requirements were satisfied to sustain Petitioner's discharge on this basis.

³ Petitioner's claim to have enlisted shortly after his son was born out of wedlock is confirmed by other evidence in Petitioner's naval record. See enclosure (5).

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a punitive discharge was authorized for his offense at the time. As noted in footnote 2 above, the Board relies upon the presumption of regularity to establish that all procedural requirements were satisfied to sustain his discharge in the absence of evidence to the contrary. Petitioner provided no such evidence. Finally, paragraph 3630650.2 of reference (d) provided that the characterization of a discharge in lieu of trial by court-martial is normally OTH.

In addition to reviewing the circumstances of Petitioner's discharge when it was administered 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, Petitioner's claimed motivation for his UA in 1997, which if true would be a significant mitigating factor; the non-violent, isolated, and relatively minor nature of his misconduct; the character references provided with Petitioner's application, reflecting his favorable contributions in the community and character, the latter of which tended to bolster the credibility of claimed motivation for going UA; Petitioner's post-service employment record reflected in the documentation that he provided with his application; 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 of the Board determined that equitable relief is warranted in the interest of justice. Specifically, the Majority found the OTH discharge received by Petitioner for a 42-day UA to be exceedingly harsh, especially considering the other mitigating factors. Accordingly, the Majority determined that the mitigating circumstances sufficiently outweighed Petitioner's relatively minor misconduct such as to justify the equitable upgrade of his discharge characterization to general (under honorable conditions).

Although not specifically requested by Petitioner, the Majority also believed that the mitigating circumstances warranted an equitable change to Petitioner's narrative reason for separation to mitigate the stigma associated with his discharge. Accordingly, the Majority determined that Petitioner's narrative reason for separation should be changed to "Secretarial Authority."

While finding the mitigating circumstances to sufficiently outweigh the relatively minor nature of Petitioner's misconduct to justify the equitable relief described above, the Majority did not find those mitigating circumstances to so significantly outweigh the severity of his misconduct such as to justify the equitable upgrade of his discharge characterization to fully honorable. In this regard, the Board notes that Petitioner engaged in misconduct which could have been punished with a dishonorable discharge and which likely would have resulted in a court-martial conviction with jail time if he had not requested discharge in lieu of trial by court-martial. Accordingly, Petitioner has already been the beneficiary of significant leniency for his misconduct when his discharge request was accepted. For the same reason, the Majority did not believe that a change to Petitioner's reentry code was warranted.

MAJORITY RECOMMENDATION:

Based upon the conclusions 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:

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That Petitioner be issued a new DD Form 214 reflecting that his service ending on 19 February 1998 was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 3630900"; and that his separation code was "JFF." All other fields of Petitioner's current DD Form 214, to include his reentry code in block 27, 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.

The Minority concurred with the Majority conclusion that there was insufficient evidence of any error 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 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. The Minority did not find a 42-day UA to be relatively minor misconduct. It also noted that Petitioner was discharged out of the Personnel Support Detachment in [REDACTED], near his home in [REDACTED], which suggests that his UA was not terminated by his voluntary surrender to his own command in [REDACTED]. Given that Petitioner was already afforded significantly leniency by avoiding the jail time and life-long stigma of a court-martial conviction, the Minority simply did not find the mitigating factors nearly sufficient to justify the equitable relief that he requests.

MINORITY RECOMMENDATION:

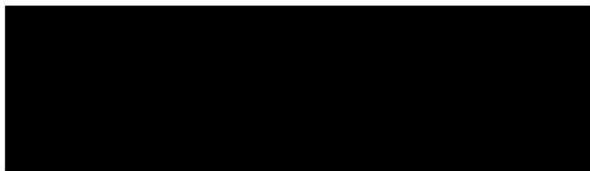
Based upon the conclusions discussed above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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.

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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 (c).

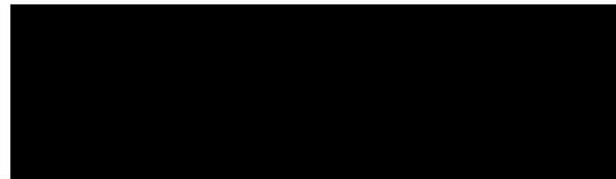
8/21/2025



Executive Director

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.)
- 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 Modifications) (Partial Relief – I concur with the Majority conclusion that some equitable relief is warranted based upon the totality of the circumstances, but I disagree with the corrective action recommended by the Majority. Specifically, I found it entirely inappropriate that Petitioner should reap the benefits of military service not actually performed. While there is good reason to alleviate the stigma associated with Petitioner's limited military service, there is no good reason that he should benefit for such curtailed service to the same extent as those who fulfill their obligations. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 19 February 1998 was "Uncharacterized"; that the narrative reason for his separation was "Entry Level Performance and Conduct"; and that his separation authority was "MILPERSMAN 3630200" (with corresponding correction to his separation code). All other fields of Petitioner's current DD Form 214 shall remain unchanged. In directing this relief, I am making the assumption, for Petitioner's benefit, that Petitioner submitted his voluntary request for discharge in lieu of separation on or before 22 December 1997, thus qualifying him for entry level status and a less stigmatizing characterization of his service.)



Assistant General Counsel (M&RA)