



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

[REDACTED]
Docket No: 8403-16

DEC 26 2017

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USN,
[REDACTED]

Ref: (a) 10 U.S.C. 1552

(b) Judge Advocate General ltr JAG:131.1:TDS:cse Ser 13/5274 of 25 Jul 80

Encl: (1) DD Form 149 (NR20160008403)
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting that the Board issue him a Certificate of Release or Discharge from Active Duty (DD Form 214) that shows his dates of service, awards, decorations, military education and a characterization of service to instead of a "Void Enlistment." Enclosures (1) - (2), and reference (b) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 November 2017, and, pursuant to its regulations, determined that the partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds 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 interest of justice to review the application on its merits.

c. Petitioner's enlistment date in the Navy is reflected in his service records as 30 November 1977. Petitioner's service record reflects that he received nonjudicial punishment (NJP) on 2 February 1979 for possession of marijuana. On 2 April 1979, he began a period of unauthorized absence (UA) that terminated on 5 April 1979. Petitioner began a second period of UA on 6 April 1979, with an unclear date of return.

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d. On 4 May 1979, Petitioner was informed that he did not qualify for the Navy's Drug Exemption Program due to the possessions of drugs not previously disclosed for a valid exemption disclosure.

e. Between 12 May and 2 October 1979, Petitioner had four more periods of UA. His record also indicates two more NJPs on 13 September 1979 and 4 October 1979, for being UA.

f. Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) with an effective discharge date of 29 October 1979. Petitioner was assigned a "Void Enlistment" in accordance with the decisions of the United States v. Russo, 23 C.M.A. 511, 50 C.M.R. 650, 1 M.J. 134 (C.M.A. 1975).

h. In 1978, the Judge Advocate General of the Navy recommended that the "Void Enlistment" process of separating members without the standard administrative separation proceedings be discontinued because the process did not effectively terminate a member's military status. In accordance with the recommendations of reference (b), void enlistments may be corrected to issue the appropriate type of discharge effective as of the date of the concerned individual's release from military control.

i. The Board, in its review of Petitioner's service record and application, carefully weighed all factors and noted that Petitioner's available service record reflects three NJPs and six periods of UA. Petitioner's performance marks for his period of service were 3.4. The Board concluded that based on Petitioner's service record, Petitioner's should be granted a general characterization of service, his reentry (RE) code should be an RE-4, and that his DD Form 214 should be corrected to reflect a discharge from the Navy on 29 October 1979.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of reference (b), that Petitioner receive partial relief with respect to correction to his Certificate of Release or Discharge from Active Duty (DD Form 214).

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 214) to show that he served in the Navy from 30 November 1977 to 29 October 1979, and received a general characterization of service. Furthermore, his DD Form 214 should show that his narrative separation reason is "Secretarial Authority," his reentry (RE) code is RE-4, his separation code is "JFF," and his separation authority is "MILPERSMAN 1910-164." Finally, Petitioner's awards, decorations and military education, as supported by his available service record and as determined by Navy Personnel Command, should be reflected on the DD Form 214.

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[REDACTED]

That a copy of this report of proceedings be filed in Petitioner's naval record.

That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 21 September 2016.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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 entitled matter.

[REDACTED]
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]
Executive Director