



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

█
Docket No: 1441-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █ USN,
XXX-XX-█

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) Case Summary

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 (Board), requesting that his other than honorable (OTH) character of service be upgraded.

2. The Board, consisting of █, █ and █ reviewed Petitioner's allegations of error and injustice on 24 March 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

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. Petitioner enlisted in the Navy and began a period of active duty on 13 August 1987. Petitioner subsequently completed this enlistment with an honorable characterization of service on 1 August 1991 and reenlisted on 2 August 1991. On 5 November 1993, Petitioner received non-judicial (NJP) for larceny. On 24 October 1994, Petitioner was convicted by summary court-martial (SCM) of dereliction in the performance of duty and damaging government property.

c. Subsequently, Petitioner was notified that he was being recommended for administrative separation by reason of misconduct due to commission of a serious offense. Petitioner was advised of, and elected to exercise his procedural right to consult with military counsel. After

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XXX-XX-[REDACTED]

consulting with counsel, Petitioner waived his right to present his case to an administrative discharge board (ADB). Petitioner's commanding officer (CO) then forwarded Petitioner's administrative separation package to the separation authority (SA) recommending administrative separation from the naval service. The SA approved the discharge recommendation, and directed that Petitioner be administratively separated from the naval service with an OTH characterization of service by reason of misconduct due to commission of a serious offense. On 19 December 1994, Petitioner was so discharged.

d. Petitioner contends that his discharge was unjust because he was given a court-martial and was "found innocent;" he states that he did not understand the law back then, he signed forms that were not explained to him, which caused him to be discharged without knowing what he signed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief. The Board reviewed the application under the guidance provided in reference (b).

In regard to Petitioner's request, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire to upgrade his character of service and his contention as previously discussed. The Board noted Petitioner did not submit any documentation or advocacy letters to be considered in support of his petition. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief.

Additionally, the Board noted Petitioner has an honorable enlistment from "13 August 1987 to 1 August 1991" and his Certificate of Release or Discharge from Active Duty (DD Form 214) should reflect his first period of enlistment as honorable. The DD Form 214 incorrectly puts both periods together as one enlistment.

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

RECOMMENDATION:

That Petitioner's naval record be corrected to reflect two separate enlistments. Petitioner's first enlistment from "13 August 1987 to 1 August 1991" with an honorable characterization of service. Petitioner's second enlistment from "2 August 1991 to 19 December 1994" with an OTH characterization of service. Petitioner shall be issued a DD Form 215 with correction to the Remarks Section (Block 18), listing his honorable period of prior service.

No further action be granted.

That a copy of this report of proceedings be filed in 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 entitled matter.

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 Regulations, 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.

4/5/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]