



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

[REDACTED]
Docket No: 5545-21
Ref: Signature Date

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

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

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 (Wilkie Memo)

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

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 October 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. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Board determined that Petitioner's personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered Petitioner's case based on the evidence of record.

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

d. The Petitioner enlisted in the Navy and began a period of active service on 25 November 2002. Petitioner's pre-enlistment physical on 16 September 2002 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. Petitioner disclosed a pre-service DWI conviction and disclosed he failed two pre-enlistment drug tests. On 27 March 2003 Petitioner reported for duty on board the [REDACTED] in [REDACTED].

e. On 13 December 2004 Petitioner received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). Petitioner did not appeal his NJP.

f. The administrative separation (Adsep) documents are not in the Petitioner's service record. However, based on the information contained on the Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), the Board relied on a presumption of regularity to support the official actions of public officers, and given the narrative reason for separation and corresponding separation and reentry codes as stated on Petitioner's DD Form 214, the Board presumed that Petitioner was properly processed and discharged from the Navy for his drug abuse. The Board observed that in blocks 25 through 28 of Petitioner's DD Form 214 it stated "MILPERSMAN 1910-146," "HKK," "RE-4," and "Misconduct – Drug Abuse," respectively. Such DD Form 214 notations collectively refer to an Adsep involving drug abuse where the Petitioner waives an Adsep board. Ultimately, on 10 February 2005 Petitioner was discharged from the Navy for drug abuse with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

g. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 4.0. Navy regulations in place at the time of his discharge required a minimum trait average of 2.50 in conduct (proper military behavior), to be eligible and considered for a fully honorable characterization of service. However, the Board noted that Petitioner's trait average during his entire enlistment consisted of only one performance evaluation in July 2004 – well in advance of his NJP for cocaine use.

h. In short, Petitioner requested clemency in the form of a discharge upgrade and to make other conforming changes to his DD Form 214. The Petitioner stated he deeply regretted his conduct during his enlistment and freely acknowledges his use of alcohol and cocaine on active duty to suppress his emotions. The Petitioner stated that he felt "empty inside" and foolishly began to self-medicate with alcohol and drugs in a misguided attempt to feel better physically and emotionally. The Petitioner argued that while he did not conduct himself in a manner consistent with being a good Sailor on active duty, he has made every effort to improve himself since his separation to live a respectable, productive, and upstanding life. Petitioner stated that he became a certified minister, is a licensed foster parent, and continues to live substance-free.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in reference (b). Specifically, the Board considered whether his application was the type that was intended to be covered by the Wilkie Memo.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

The Board initially noted that Petitioner's contention his Adsep board waiver was not a knowing and intentional one thus rendering it null and void was not persuasive and entirely without merit. The Board relied on a presumption of regularity to support the official actions of public officials. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumed Petitioner was properly processed for separation and discharged from the Navy. In the case at bar, the Board unequivocally concluded Petitioner did not meet his burden to rebut the presumption of regularity, and determined that Petitioner's Adsep was in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the wrongful use of controlled substances, the Board noted the Petitioner's genuine remorse and taking personal responsibility for his misconduct, as well as his noteworthy post-service conduct to overcome his personal challenges. The Board also determined that the Petitioner's abusive childhood and being the victim of multiple sexual assaults as an adolescent likely caused certain behavioral issues and/or mental health symptoms that carried over onto active duty. Accordingly, while not necessarily excusing or endorsing the Petitioner's drug-related misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "general (under honorable conditions)" (GEN) strictly on clemency grounds is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an honorable discharge characterization. The Board determined that an honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that despite his overall conduct trait average, a GEN discharge characterization was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner only merits a GEN characterization of service and no higher.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF," and the reentry code be changed to "RE-1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

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

10/21/2021

[REDACTED]
Executive Director
[REDACTED]