



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

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Docket No: 5980-21

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ■■■■■
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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) discharge character of service be upgraded to general (under honorable conditions).

2. The Board, consisting of ■■■■■ and ■■■■■ reviewed Petitioner's allegations of error and injustice on 20 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 reference (b).

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 enlisted in the Marine Corps and began a period of active duty on 5 August 1991.

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d. On 3 February 1994, Petitioner received non-judicial punishment (NJP) for disobeying an order from senior noncommissioned officer and malingering. On 7 April 1994, Petitioner was issued an administrative remarks (Page 11) counseling concerning the following deficiencies: dereliction in the performance of his duties and total disregard for complying with military regulations. On 11 April 1994, Petitioner received his second NJP for failure to report to his appointed place of duty.

e. Unfortunately, those documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). However, the record shows that on 30 June 1994, the separation authority (SA) approved Petitioner's request for an other than honorable (OTH) discharge in lieu of court-martial. The SA directed the commanding officer to process and execute Petitioner's administrative discharge under than OTH conditions in lieu of trial by court-martial.

f. At the time of his discharge, on 21 July 1994, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) with a characterization of service of "Other Than Honorable," separation authority was "MARCORSEPMAN PAR 1105," separation code was "JJD1," reenlistment code was "RE-3C," and narrative reason for separation was "As a Result of a Court-Martial (Other)."

g. Petitioner provided the following contention for the Boards' consideration:

1) He was recovering from a serious car accident, heavily medicated on opiates and muscle relaxers, and gave in to peer pressure, which led to him trying marijuana. He blames himself for being "young and dumb," but he was going through the recovery process of the accident. He further states that he had lost his best friend due to an accidental suicide; he was the target of several group assaults and was under scrutiny for his injuries that he sustained in his accident.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of his circumstances, Petitioner's request merits partial relief.

In regard to Petitioner's request for an upgrade of his character of service, 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 discharge character of service and his contention as previously discussed. The Board noted Petitioner did not submit any supporting documentation or advocacy letters in support of his application to be considered for clemency consideration. Based upon this review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by separation at Petitioner's request to avoid trial by court-martial, outweighed these mitigating factors. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

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Additionally, after further review of Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), the Board noted Petitioner's DD Form 214 is in error. The DD Form 214 incorrectly cites Petitioner's narrative reason for separation, separation code, separation authority, and reenlistment code. In this regard, in accordance with the separation authority's decision, the Board determined Petitioner's DD Form 214 shall be corrected to reflect his narrative reason for separation as "In Lieu of Trial by Court-Martial," separation code as "KFS1," separation authority as "MARCORSEPMAN PAR 6419," and reenlistment code as "RE-4."

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an error warranting the following corrective action:

That Petitioner's be issued a DD Form 215 indicating that on 21 July 1994, Petitioner's narrative reason for separation was "In Lieu of Trial by Court-Martial," separation code was "KFS1," separation authority was "MARCORSEPMAN PAR 6419," and reenlistment code was "RE-4."

That no further changes be made to Petitioner's record.

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.

11/5/2021

[REDACTED]
Executive Director
[REDACTED]