



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

█
Docket No: 6397-21

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) discharge be upgraded to an honorable character of service.

2. The Board, consisting of █, █ and █ reviewed Petitioner's allegations of error and injustice on 27 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 Navy and began a period of active duty on 1 July 1997. Petitioner completed this enlistment on 20 March 2002, with an Honorable characterization of service and reenlisted on 21 March 2002.

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d. On 12 November 2002, Petitioner received non-judicial punishment (NJP) for Violation of the Uniform Code of Military Justice (UCMJ), Article 86 (Unauthorized Absence) and Article 87 (Missing Ship's Movement). Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). The Board noted Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), block 29 which states "Time Lost." Petitioner's "Time Lost" for his current enlistment was "15 December 2002 to 20 February 2003, totaling 67 days," "22 May 2003 to 4 June 2004, totaling 13 days," and "31 July 2003 to 3 August 2003, totaling 3 days." Time Lost describes periods on active duty spent either in an unauthorized absence status or while serving in military confinement. The record does not reflect a period of military confinement.

e. On 1 October 2003, Petitioner was issued a DD Form 214 with a characterization of service of "Other Than Honorable," separation authority was "MILPERSMAN 1910-140," separation code was "HKA," reenlistment code was "RE-4," and narrative reason for separation was "Pattern of Misconduct."

f. Petitioner states he has four years of honorable service, and would like to receive benefits.

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 statement 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 relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumes that Petitioner was properly processed for separation and discharged from the Navy. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief.

After further review of Petitioner's official military personnel file, the Board noted Petitioner has a period of honorable service from "1 July 1997 to 20 March 2002," and his DD Form 214 should reflect this period of continuous honorable service.

Applicable regulations authorizes the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization except "Honorable," as is the case at present. In this regard, the Board determined Petitioner's naval record shall be corrected to reflect his continuous honorable active service.

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RECOMMENDATION:

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

That Petitioner's naval record be corrected to reflect his period of service from "1 July 1997 to 20 March 2002," as honorable. Petitioner shall be issued a DD Form 215 with correction to the Remarks Section, annotating "Continuous Honorable Active Service: "1 July 1997 to 20 March 2002."

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.

11/15/2021

[REDACTED]

Executive Director

[REDACTED]