



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: 7866-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █ USN,
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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 naval record be corrected by upgrading the characterization of service from "other than honorable" to "general under honorable conditions" on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 7 February 2022 and, pursuant to its regulations, determined 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 interest of justice to review the application on its merits.

c. Petitioner enlisted in the U.S. Navy on 12 November 1991. On 7 June 1993, Petitioner self-referred to the command Drug and Alcohol Program Advisor (DAPA). On 12 July 1993, Petitioner elected to receive rehabilitation services via the

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED] USN,
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Department of Veterans Affairs (VA). On 9 December 1993, Petitioner received nonjudicial punishment (NJP) for an unauthorized absence (UA) period of nine (9) days and for wrongfully using marijuana. Consequently, on 14 January 1994, Petitioner was notified of pending administrative separation by reason of drug use. Petitioner elected his right to obtain copies of documents to be forwarded to the discharge authority and waived all other procedural rights. On 20 January 1994, Petitioner rescinded his decision and declined to receive rehabilitation services via the VA. On 21 January 1994, Petitioner's Commanding Officer (CO) recommended he be separated with an other than honorable (OTH) characterization of service due to drug abuse, adding "[Petitioner] has become an unproductive member of the military." On 1 February 1994, the discharge authority agreed with Petitioner's CO and directed he be discharged with an OTH characterization of service for Drug Use. Petitioner was so discharged on 4 February 1994.

d. Petitioner accepts responsibility for his actions and contends his discharge was a result of his misconduct. He adds he was on legal hold due to a knee injury, just turned 21 years old, and purchasing alcohol was new to him. Petitioner admitted to overindulging in alcohol, smoking marijuana, and failing to report for duty. However, he provided evidence that he has become a productive member of society since his discharge from the Navy. Petitioner worked for a number of years in private industry while attending school. He is currently employed as a Mathematics Professor. He submitted his Masters Diploma with transcripts, Bachelors Diploma with transcripts, Associates transcripts, Curriculum Vitae, a credit report, and multiple professional certificates for clemency consideration.

CONCLUSION:

The Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in OTH discharge. However, in light of reference (b), after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to "general (under honorable conditions)". In making this determination, the Board considered the fact Petitioner was involved in a single incident of misconduct during his active duty career. Further, when weighing Petitioner's significant post-discharge accomplishments against his misconduct, the Board determined the mitigation evidence sufficient offset his misconduct to merit an upgrade to his characterization of service to General (under honorable conditions).

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 and new discharge certificate indicating the character of service as "general (under honorable conditions)".

No further changes be made to Petitioner's record.

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

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

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.

2/22/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]