



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

[REDACTED]
Docket No: 0943-22

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. §1552
(b) UNSECDEF Memo of 20 Sep 11 (Correction of Military Records Following Repeal of 10 U.S.C. 654)
(c) USD Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault or Sexual Harassment"
(d) USECDEF Memo of 25 July 2018 "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 discharge be upgraded from other than honorable conditions to honorable or general under honorable conditions.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 June 2022, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies.

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.

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

c. Petitioner enlisted in the U.S. Navy and began a period of active duty from 7 July 1986 to 20 January 1991, which ended in an Honorable characterization of service and as a result of his reenlistment on 20 January 1991. Petitioner subsequently commenced a second period of active duty on 21 January 1991. On 28 April 1993, Petitioner received his first nonjudicial punishment (NJP) for having knowledge of and failing to obey a lawful order. Subsequently, Petitioner was involved in the practice of making informal loans at an extraordinary high interest rate, also known as "slushing," which was against regulations. As a result of the aforementioned, Petitioner received his second NJP on 10 December 1993, for failure to obey an order or regulation and wrongful appropriation.

d. On 10 December 1993, Petitioner was notified of pending administrative separation action by reason of commission of a serious offense (COSO), at which time he elected his right to consult with counsel and have his case heard before an administrative discharge board (ADB). On 21 January 1994, an ADB was held and, by a vote of 3-0, found Petitioner committed misconduct and should be discharged. By a vote of 2-1, the ADB recommended Petitioner's characterization of discharge be Other Than Honorable (OTH). On 22 January 1994, Petitioner's Commanding Officer (CO) recommended to the separation authority that Petitioner be discharged with an OTH. On 3 March 1994, the discharge authority directed Petitioner be separated with an OTH by reason of COSO and, on 15 March 1994, he was so discharged.

e. Petitioner contends, (1) his first four years of service were perfect, (2) in his 6th year of service he loaned money and did not know it was against regulations, (3) he was in the 1st Gulf War and always did everything he could for his country, (4) he served honorably and gave everything to the Navy, (5) everywhere "they" wanted him to go he went, (6) he sacrificed much, and (7) he is experiencing knee pain and mental issues for which he needs help.

g. For purposes of clemency consideration, Petitioner did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

h. In regard to Petitioner's assertions of a Mental Health Condition/Issues, the Board requested, and reviewed, an advisory opinion (AO) from a mental health professional. The AO reviewed his service record as well as his petition and the matters submitted. According to the AO:

The Petitioner's complete service medical record was not available for review. Among available records, there is no evidence that he was diagnosed with a mental health condition during military service. He has provided no post-service medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service.

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

There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

CONCLUSION:

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner’s case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for an upgrade and contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined Petitioner’s misconduct, as evidenced by his NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the negative impact his conduct likely had on the good order and discipline of his command. Finally, the Board concurred with the AO that there is insufficient evidence that his misconduct could be attributed to a mental health condition. As a result, the Board concluded Petitioner’s conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that Petitioner’s request for a discharge upgrade does not merit relief.

Notwithstanding the Board’s decision to deny Petitioner’s request for a discharge upgrade, the Board noted the Petitioner’s official military personnel record (OMPF) does not contain a DD Form 214 capturing his first enlistment period and, as such, determined partial relief is warranted as recommended below.

RECOMMENDATION:

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

In accordance with instructions which governed issuance of Certificate of Release or Discharge from Active Duty (DD Form 214) at the time of Petitioner’s service, Petitioner be issued a DD Form 214, capturing his first enlistment period from “7 July 1986 to 20 January 1991,” his Characterization of Service as “Honorable,” his Separation Code as “KHC”, his Separation Reason as “Immediate enlistment/reenlistment,” and his Reentry Code as “RE-1,” additionally, block 18 should read of said form should read as “Immediate Reenlistment, 21 January 1991.”

No further changes be made to Petitioner’s record.

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.

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

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 Regulation, 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.

7/8/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]