



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

█
Docket No: 1118-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, █,
USN, █

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) Reenlistment Contract of 15 Oct 90
(4) Reenlistment Contract of 30 Nov 95
(5) Letter of Commendation of 30 Sep 88
(6) Letter of Commendation of Apr 94
(7) Meritorious Mast of Mar 1989
(8) Evaluation Report & Counseling Record for 1 Dec 95 to 26 Nov 96
(9) NJP of 17 Apr 97
(10) Administrative Remarks of 8 Jun 97
(11) Enlisted Performance Record

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 characterization of service be upgraded to general (under honorable conditions) (GEN).

2. The Board reviewed Petitioner's allegations of error and injustice on 7 March 2022, 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 waive the statute of limitations and review Petitioner's application on its merits.

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c. Petitioner commenced active duty with the Navy on 15 October 1986, reenlisted on 15 October 1990, and again on 30 November 1995. See enclosures (2), (3), and (4).

d. During his active duty service, Petitioner received a Letter of Commendation in 1988 and 1994. In addition, he received a Meritorious Mast for his performance during training operations in 1989. See enclosures (5), (6), and (7).

e. On 16 January 1997, Petitioner received an evaluation due to his frocking to E-6. Petitioner was described as “a superb technician who is knowledgeable about the equipment” that possess “unlimited potential” but explains that “his reluctance to take initiative to accomplish certain tasks such as outstanding qualifications and general E-5 responsibilities, has held him back from what he is capable of achieving.” See enclosure (8).

f. On 17 April 1997, Petitioner received nonjudicial punishment (NJP) for three specifications of unauthorized absence and for failure to obey a lawful order. He is reduced in paygrade from E-5 to E-4 and assigned 14 days of restriction. See enclosure (9).

g. On 8 June 1997, Petitioner received administrative remarks documenting he was disqualified as an Enlisted Surface Warfare Specialist (ESWS) for failing to maintain said qualification. This administrative remark further document that Petitioner’s military bearing, demeanor, and his refusal to perform duties afloat, were not consistent with the goals of the ESWS program. See enclosure (10).

h. The documents related to Petitioner’s administrative separation are not in his official military personnel file. However, based upon information contained on his Certificate of Release or Discharge from Active Duty (DD Form 214), he was discharged on 19 June 1997, with an other than honorable (OTH) characterization of discharge for misconduct due to a commission of a serious offense. Petitioner’s final performance average as of his reenlistment of 30 November 1995 was 4.0. See enclosures (2) and (11).

i. Petitioner contends; (1) his discharge is not a “true” display of his service, (2) he is able and willing, even today, to serve and defend his country, (3) he served honorably for more than ten years, advanced to rank of E-6 through hard work and determination, even qualifying for his ESWS at another command on his own time, (4) he accepted his discharge and regrets that decision because he was young and did not fully understand what an OTH characterization of service meant at the time, (5) he understands he should have never accepted his discharge as his service to the country did not deserve an OTH characterization. Enclosure (1).

MAJORITY CONCLUSION

The Board Majority, in its review of Petitioner’s entire record and application, carefully considered the policy guidance of reference (b), and Petitioner’s request. After reviewing the available evidence, the Majority concluded relief was warranted in the form of an upgrade to Petitioner’s characterization of service. In making this recommendation, the Majority considered Petitioner’s documented trait performance throughout his career and his frocking to E-6 in 1997. In the Majority’s opinion, Petitioner was a strong performer until the end of his career with little

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evidence that his documented misconduct warranted an OTH characterization of service. While the Majority took into consideration that NJP was imposed on Petitioner several months prior to his administrative separation from the Navy, the lack of any documented evidence in his record regarding his administrative separation, and basis for an OTH characterization of service, created appearance of an injustice that rebutted the presumption of regularity for the Majority when considered in light of his otherwise stellar record. Further, the Majority took into consideration the time since Petitioner's discharge from the Navy and his good military character letter from his shipmate, and believed that no useful purpose is served by continuing to characterize Petitioner's service as other than honorable. The Majority recommended that Petitioner's characterization of service be changed to general (under honorable conditions).

MAJORITY RECOMMENDATION

In view of the above, the Majority recommends the following corrective action:

That Petitioner be issued a new DD Form 214 to show he was discharged with a general (under honorable conditions) characterization of service.

That no further corrective action should be taken.

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

MINORITY CONCLUSION

The Board Minority, in its review of Petitioner's entire record and application, carefully considered the policy guidance of reference (b), along with Petitioner's request. However, the Minority determined that the presumption of regularity applies in Petitioner's case and the evidence presented was insufficient to rebut it. As such, the Minority concluded Petitioner's OTH was issued without error or injustice and no change is warranted. In making this recommendation, the Minority determined that Petitioner's OTH characterization of service is supported by his documented poor performance in enclosures (8), (9), and (10).

Additionally, the Minority considered the Wilkie Memo, and still similarly concluded after reviewing enclosure (1) and the record holistically, that the OTH characterization of service is supported. In this connection, the Minority believed that the Petitioner did not provide sufficient written and/or supporting documentation to consider upgrading Petitioner's characterization of service based on clemency.

MINORITY RECOMMENDATION

In view of the above, the Minority recommends that no corrective action be taken.

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.

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5. The foregoing action of the Board is submitted for your review and action.

4/13/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Majority Recommendation (Grant Relief)

Reviewed and Approved Minority Recommendation (Deny Relief)

4/26/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]