



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

██████████
Docket No: 1718-22

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████.,
USN, ██████████

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 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments

(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to make certain conforming changes to his DD Form 214 including a change to his reentry code.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 20 May 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 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 interests of justice to review the application on its merits.

c. Following a period of honorable service with the Army National Guard of ██████████ ending in May 2016, the Petitioner enlisted in the Navy Reserve on or about 24 May 2018. Petitioner's pre-enlistment physical on 22 May 2018 and self-reported medical history noted no psychiatric

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

or neurologic conditions or symptoms. Petitioner was initially assigned to a reserve unit located at [REDACTED] ([REDACTED]).

d. In June 2019, the [REDACTED] notified Petitioner of a positive urinalysis for marijuana. Petitioner expressly denied ever using marijuana and informed the [REDACTED] that he worked in law enforcement working in narcotics interdiction with frequent exposure to marijuana. Petitioner further explained to the [REDACTED] that marijuana was the most common drug in his area of operations in [REDACTED] and he was exposed to frequent inhalation of marijuana while conducting covert operations with narcotics dealers.

e. The administrative separation (Adsep) documents are not in the Petitioner's service record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the characterization, narrative reason for separation, and corresponding separation and reentry codes as recommended in a COMNAVPERSCOM message dated 27 April 2021, the Board presumed that Petitioner was properly processed and discharged from the Navy Reserve for drug abuse. Ultimately, Petitioner was discharged from the Navy Reserve for drug abuse with a General (Under Honorable Conditions) (GEN) characterization of service and assigned a RE-4 reentry code.

f. In short, Petitioner requested clemency in the form of changing his narrative reason for separation, separation code, and reentry code as listed on his DD Form 214. The Petitioner stated he has worked in [REDACTED] in a law enforcement capacity since January 2019 doing drug interdiction and was frequently exposed to marijuana as part of his duties. The Petitioner denied ever using marijuana, and stated he passed a polygraph test for his law enforcement career regarding any prior drug use. Petitioner indicated he only signed the Adsep acknowledgment of rights form because the NOSC was threatening him with a possible court-martial. Petitioner contended that he never once was afforded the chance to properly contest the drug allegations. Petitioner provided transcripts indicating that he was a college graduate, and he stated he was currently finishing up a master's degree in psychology.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in reference (b).

The Board relied 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 presumed Petitioner was properly processed for separation and discharged from the Navy. In the case at bar, the Board concluded Petitioner did not meet his burden to rebut the presumption of regularity, and determined that Petitioner's Adsep was in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the wrongful use of controlled substances, the Board noted that Petitioner's law

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

enforcement career and drug interdiction duties, more likely than not, caused him to be exposed to marijuana on a regular basis. The Board also noted that Petitioner's THC level was extremely low and barely above the Department of Defense testing cutoff level, giving credibility to the theory that repeated exposure to marijuana could cause a positive drug test in Petitioner's case. The Board also noted Petitioner's impressive educational credentials, his previous honorable service in the Army National Guard, his current law enforcement career, and the fact that without the drug allegation there was no other misconduct or adverse counseling in his service record. Accordingly, the Board concluded that no useful purpose is served to describe Petitioner's discharge as having been for misconduct (drug abuse), and that certain remedial changes to Petitioner's DD Form 214 strictly on clemency grounds were appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an Honorable discharge characterization. As previously discussed, the Board determined Petitioner's Adsep for drug abuse was proper based on the presumption of regularity. The Board concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that the Petitioner only merits a GEN characterization of service and no higher.

RECOMMENDATION:

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

That Petitioner shall be issued either/both dated on or after 27 April 2021: (a) a new NAVPERS 1070/613 Administrative Remarks, or (b) a new NAVPERS 1070/615, Record of Discharge from the U.S. Navy Reserve (Inactive), reflecting the following information (whichever is appropriate to currently document a USNR separation):

That Petitioner's character of service remain "General (Under Honorable Conditions)," that the narrative reason for discharge be changed to "Secretarial Authority," that the separation authority be changed to "MILPERSMAN 1910-164," that the separation code (SPD Code) be changed to "JFF," that the reentry code be changed to "RE-1" and, if applicable, that any non-recommendation for reenlistment be removed.

That the original NAVPERS 1070/613 Administrative Remarks entry dated on or after 27 April 2021 reflecting a GEN characterization of service be removed from Petitioner's service 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

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

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.

5/25/2022

[REDACTED]
Executive Director
[REDACTED]