



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

██████████
Docket No: 1815-22
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 of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments

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 Certificate of Release or Discharge from Active Duty (DD Form 214) in his naval record be replaced.

2. The Board, consisting of ██████████ and ██████████ reviewed Petitioner's allegations of error and injustice on 30 March 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 interests of justice to review Petitioner's application on its merits.

c. Petitioner enlisted and entered a period of active duty in the Navy on 19 March 1976 for a period of four years.

d. On 14 July 1977, Petitioner received nonjudicial punishment (NJP) for possession of a controlled substance in violation of Article 92, Uniform Code of Military Justice (UCMJ).

e. An abbreviated naval message dated 17 August 1977 states in pertinent part:

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2. Exemption not granted
3. Marijuana/two times weekly/two months
4. No disciplinary action pending
6. Referred to CAAC for evaluation
7. Recommend return to duty. SNM attended CAAC program Phase I from 1 August 1977 to 11 August 1977.
8. Recommend retention. Note that SNM is pending medical discharge board due to chronic hearing loss. Accordingly, no action contemplated regarding discharge.
9. Apprehended by military authorities.
10. Written warning has been made a part of SNM's service record.

f. The latest date reflected in Petitioner's service record is 16 January 1980 and the administrative remark indicates he had attained the rank of petty officer third class (AT3/E-4).

g. Petitioner's service record is incomplete.

h. Petitioner contends he served for four years of active duty in the Navy to include Squadron [REDACTED] and was honorably discharged. He states he requested a copy of his DD Form 214 from the National Personnel Records Center and was told his service record is incomplete.

CONCLUSION:

In accordance with reference (b), the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice. Upon careful review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief and that his DD Form 214 should be reissued and that his characterization of service should be corrected to reflect General (Under Honorable Conditions).

In its deliberations, the Board noted that Petitioner's service record is incomplete; however the Board relies on a presumption of regularity to support the official actions of public officers, and in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found that although somewhat cryptic, the naval message dated 17 August 1977 in conjunction with Petitioner's NJP indicate that Petitioner was in possession of marijuana and also appears to have used it approximately twice a week for two months. The message clearly indicates that the command was aware of the misconduct and referred Petitioner to substance abuse treatment which he successfully completed. The message further documents that Petitioner was diagnosed with chronic hearing loss and pending a medical evaluation board (MEB). Applying the presumption of regularity, the Board determined that the command intended for Petitioner to undergo the MEB process and not to be administratively separated for misconduct. The MEB process would have either found Petitioner fit for duty at which time he would have presumably continued on active duty to the end of his active duty obligation; or if he was found to have an unfitting condition, he would have been separated with severance pay or medically retired depending on the disability rating. Whether he reached the end of his active duty service obligation or was medically discharged, Petitioner's characterization of service would have been assigned in accordance with the contemporary regulations, policy, and procedure at the time of Petitioner's discharge, and presumably the type

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as warranted by his service record. When considering characterization of service, the Board took into account that Petitioner received NJP for possession of a controlled substance, appears to have wrongfully used marijuana because the Naval message indicates "exemption not granted," and Petitioner engaged in some type of behavior that caused him to be "apprehended by military authorities." Accordingly, the Board determined that Petitioner's service traits would have reflected these incidents and his characterization of service would have been General (Under Honorable Conditions). Furthermore, in the interests of justice and in light of the potential for future negative implications, the Board determined Petitioner's narrative reason for separation, separation authority, and separation code should be changed to "Secretarial Authority," and that his reenlistment code should reflect "RE-1."

RECOMMENDATION:

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

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (Under Honorable Conditions)," that the narrative reason for his separation was "Secretarial Authority," that his separation authority was "MILPERSMAN 1910-164," that his separation code was "JFF," and his reentry code was "RE-1." Furthermore, Petitioner's dates of service should reflect 19 March 1976 to 16 January 1980 and that he was discharged at the rank of petty officer third class (AT3/E-4).

That no further corrective action should 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.

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.

4/25/2022

[REDACTED]
Executive Director
[REDACTED]