



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

██████████
Docket No: 3234-22

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, XXX-XX-██████████

Ref: (a) 10 U.S.C. 1552
(b) BUPERSINST 1900.8 dtd 28 Jun 1993
(c) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(2) Case summary
(3) Naval record (excerpts)

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 adjustment to his record to upgrade his character of service of service to Honorable. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, ██████████, reviewed Petitioner's allegations of error and injustice on 11 May 2022, and, pursuant to its regulations, determined that 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, applicable statutes, regulations, and policies to include references (b) and (c).

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 Navy and began a period of active duty on 18 April 1988. On 8 June 1989, Petitioner received non-judicial punishment (NJP) for theft and conspiracy. On the same day, Petitioner was counseled regarding his misconduct, and notified further deficiencies may result in the initiation of administrative separation proceedings.

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d. On 25 February 1992, Petitioner reenlisted for a period of three years.

e. On 20 October 1993, Petitioner was counseled regarding an incident of simple assault that occurred on 17 October 1993.

f. On 28 July 1995, Petitioner was convicted at general court-martial (GCM) of burglary, adultery, and indecent assault. He was sentenced to confinement, reduction in rate, and punitive reprimand.

g. On 31 October 1995, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. On 30 January 1996, Petitioner elected his right to consult with counsel and review of his case by an administrative discharge board (ADB). On 21 March 1996, the ADB determined Petitioner committed misconduct by reason of the commission of a serious offense and recommended his separation from naval service with an Other Than Honorable (OTH) character of service. On 5 April 1996, Petitioner's commanding officer recommended his separation from naval service with an OTH character of service due to the commission of a serious offense. On 25 April 1996, the Chief of Naval Personnel (CNP) concurred with the recommendation of Petitioner's commanding officer and the ADB. On 2 May 1996, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) directed that Petitioner be discharged. On 22 May 1996, Petitioner was so discharged.

h. At the time of Petitioner's discharge, he was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that contains an administrative error in Box 18 – Remarks. Per Reference (b), Box 18 should contain a statement that captures Petitioner's first enlistment and honorable service.

i. Petitioner contends his discharge was unfair because his attorney did not have sufficient time to prepare his case. He further contends he did not have other infractions while he was on active service. Petitioner provides additional statements, two character letters, and documentation of his denial to purchase a firearm in the State of [REDACTED].

CONCLUSION:

Upon review and consideration of all the evidence of record, and in light of reference (b), the Board determined Petitioner's record warrants partial relief. The Board noted Petitioner's DD Form 214 contains an administrative error and warrants correction. Petitioner's DD Form 214 does not indicate his period of honorable service from 18 April 1988 to 24 February 1992.

In regard to Petitioner's request to upgrade his character of service. The Board noted the Petitioner's contention that his misconduct was an isolated incident is contrary to the record. Petitioner committed more than one incident of serious misconduct during his active service. In regard to Petitioner's contention of inadequate time for his counsel to prepare his case, the Board determined outside of his statements, Petitioner failed to provide sufficient evidence such as witness statement to support his contentions. In addition, the Board noted that Petitioner's conviction by a GCM, and not his NJP, was the basis for his administrative separation since he

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reenlisted after his NJP. Finally, 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 determined Petitioner's allegations are unsupported in the record or by submission of evidence to overcome that presumption. Ultimately, the Board considered Petitioner's supporting evidence and determined it did not mitigate the severity of his misconduct. As a result, the Board concluded his 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.

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

RECOMMENDATION:

Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) indicating the Box 18 – Remark: Continuous Honorable Service from 18 April 1988 to 24 February 1992.

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.

6/9/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]