



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

█
Docket No: 3504-22
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

Encl: (1) DD Form 149 w/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 discharge characterization be upgraded from "Other Than Honorable" to "Honorable."
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 6 June 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, 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.
 - c. Petitioner enlisted in the Navy and began a period of active duty on 22 February 1990.
 - d. From a period of 10 May 1991 to 6 September 1991, Petitioner received nonjudicial punishment (NJP) on three occasions for dereliction of duty.
 - e. On 11 September 1991, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct.

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f. On 12 September 1991, Petitioner elected to waive all his procedural rights. On the same date, a medical officer determined that there was no medical reason for Petitioner falling to sleep while on duty.

g. On 17 September 1991, the Petitioner's commanding officer recommended an other than honorable discharge characterization of service by reason of misconduct due to pattern of misconduct.

h. On 27 September 1991, the discharge authority approved and ordered that Petitioner be administratively separated from the Navy with an OTH discharge characterization of service by reason of misconduct due to pattern of misconduct.

i. On 18 October 1991, Petitioner was discharged.

j. Petitioner contends he was recently advised that his current discharge status was listed as Dishonorable. He claims that he was not informed, did not received any due process, or notification that his discharge was changed. Petitioner states that he was not medically evaluated, or exanimated for sleeping issues before being released from duty. For purposes of clemency consideration, the Board noted Petitioner provided multiple advocacy letters describing post-service accomplishments.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board determined that the Petitioner's record warrants partial favorable action.

The Board notes Petitioner's disciplinary infraction and does not condone his misconduct. However, the Board considered Petitioner's misconduct as relatively minor in nature and, concluded that as a matter of clemency, the record should reflect that he was discharged with a General (Under Honorable Conditions) characterization of service vice receiving an OTH characterization of service. In making this finding, the Board considered the fact his three NJPs occurred within a small window of time and involved sleeping on duty; a condition for which he was medically examined. When weighing Petitioner's misconduct against the mitigation evidence of post-discharge good character, the Board determined clemency in the form of a discharge upgrade was appropriate. However, the Board also concluded no change to his narrative reason for separation or reentry code was supported by the evidence based on his documented misconduct and lack of error or injustice.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record even under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting a "General (Under Honorable Conditions)" discharge characterization of service vice "Other Than Honorable."

No other change is recommended.

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.

6/29/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]