



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

[REDACTED]  
Docket No: 3551-22

Ref: Signature date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)  
(c) NAVADMIN 153/96 (FY97 TERA Program)  
(d) NAVADMIN 126/97 (FY98 TERA)

Encl: (1) DD Form 149 w/ enclosures

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 be upgraded to "Honorable," that his narrative reason for separation, separation code, and reentry code be corrected to reflect a discharged under "Secretarial Authority," and that he retroactively be approved for early retirement under Temporary Early Retirement Authority (TERA). Enclosure (1) applies.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 7 October 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, applicable statutes, regulations, and policies, to include references (b) through (d).

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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted and began a period of active duty on 8 February 1982. He served multiple periods of service, reenlisting on 10 December 1984, 11 September 1989, 9 May 1995, and, after having received his third award for Good Conduct, on 15 April 1997. Subsequently, he was charged by civilian authorities and, on 24 October 1997, found guilty of domestic battery.

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He also received nonjudicial punishment on 18 November 1997 for a violation of Article 86 due to unauthorized absence (UA).

c. Initially, Petitioner's six month jail sentence was suspended for 1 year conditioned upon the successful completion of "Intercept Project" (a Navy Family Services program for prevention of domestic violence). Although Petitioner completed level III alcohol rehabilitation treatment, his civilian court records indicate that he was kicked out of the Intercept Project "for lying." As a result, the civilian court imposed the suspended sentence and he was subsequently incarcerated on or about 9 May 1998. On 20 May 1998, while in the hands of civil authorities, he was notified of processing for administrative separation by reason of "misconduct – civilian conviction." Due to circumstances related to his incarceration, Petitioner waived his hearing before an administrative board.

d. On 30 June 1998, Petitioner's discharge in absentia was approved by Commander, Naval Base, [REDACTED], for the reason of "misconduct – commission of serious military or civilian offense." Petitioner was discharged, on 24 Jul 1998, under Other Than Honorable (OTH) conditions; however, his Certificate of Discharge or Release from Active Duty (DD Form 214) did not specify his period of continuous Honorable service from 11 September 1989 to 14 April 1997 in the block 18 comments.

e. With respect to Petitioner's request under TERA, he served continuously in the grade and rating of E-5/OS2 with a primary Navy enlisted code (NEC) of 0317 from 16 May 1989. He attained over 15 years of service in February of 1997; however, per reference (c), the TERA program for fiscal year (FY) 1997 restricted early retirements in the OS rating to the grade of E-6. Meanwhile reference (d), the FY98 authority, did not extend TERA to the OS rating regardless of grade or years of service.

f. Petitioner contends through counsel that he desired to submit a request for early retirement under TERA but was denied the opportunity to apply due to his position with the landing craft air cushion (LCAC) unit. Additionally, he contends that his discharge under OTH conditions, after over 15 years of honorable service, due to a civilian conviction for a misdemeanor offense was unduly harsh in light of: the offense itself; the circumstances which resulted in the imposition of his suspended incarceration; his inability to afford civilian counsel to represent his mitigating and extenuating circumstances at a hearing before a board; and, his evidence of post-discharge character. As evidence of post-discharge character, he asserts that a court awarded custody of his minor children shortly after his release from confinement and notwithstanding his conviction for domestic violence due to his spouse's unsuitability; he also cites his forgiveness of over \$45,000 in arrears payments of child support owed by his former spouse and his continued support of her and his children through his provision of a trailer home at his daughter's property to permit her to live nearby.

g. In support of his contentions of post-discharge character, Petitioner submits a court award of temporary child custody from 2000. Additionally, in support of his contentions of clemency, Petitioner submits a court order sealing the civilian conviction which resulted in his discharge as evidence both of post-discharge character / lack of subsequent criminal conduct and also as

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evidence regarding the severity of his offense in that it is considered by the state of Nevada to be a misdemeanor and, therefore, eligible for the grant to seal the record.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in reference (b) intended to be covered by this policy.

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board found Petitioner's evidence of post-discharge character and the overall honorable conditions of his final period of service persuasive when weighed against the totality of favorable clemency factors, to include the court award of custody of his minor children notwithstanding his temporally recent conviction for domestic violence and the presumptive relative severity of his offense in light of his judicially sealed record of that conviction. However, the Board found that circumstances of Petitioner's removal from the Intercept Project sufficiently negative to not merit an "Honorable" characterization of service; likewise, the Board noted that Petitioner did not provide additional substantiating evidence regarding his contentions of forgiving his former spouse's debt or of his actions to foster her relationship with their daughter. As a result, the Board concluded that Petitioner's matters in clemency were sufficient to outweigh the misconduct evidenced by his civilian conviction and NJP, but only to the extent of deserving a discharge of General (Under Honorable Conditions). 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 and/or performance 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.

Additionally, as noted above, the Board determined administrative remarks noting Petitioner's previous period of continuous Honorable service are missing from his last DD Form 214. Accordingly, the Board concluded the missing information must be added to the new DD Form 214.

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

#### RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating, for the period ending 24 July 1998, that his characterization of service was "General (Under Honorable Conditions)" and that he had "Continuous Honorable service from 11 September 1989 to 14 April 1997" in block 18.

That no further changes be made to Petitioner's record.

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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.

10/13/2022

