



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

█
Docket No: 3967-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) SECDEF 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

Encl: (1) DD Form 149

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 his record be corrected to upgrade the character of his service to Honorable.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 29 July 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, and reference (b), 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 the enclosure was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. The Petitioner was commissioned as an Ensign in the US Navy on 16 May 2003. Petitioner was promoted to Lieutenant Junior Grade (LTJG) on 23 May 2005. On 13 February 2006, Petitioner's Fitness Report & Counseling Record reflects he was promotable, and was assigned a trait of 4.0. On 23 February 2006, Petitioner was received a civil conviction for

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sexual battery of a 16 year old boy. A Board of inquiry (BOI) convened on 30 August 2006 and determined Petitioner committed misconduct due to his civil conviction. The BOI recommended he be separated with an Other Than Honorable (OTH) character of service. In response, Petitioner submitted a qualified resignation request with a General (Under Honorable Conditions) discharge. His request was denied. On 27 November 2006, Chief of Naval Personnel (CNP) concurred with the Board of Inquiry's recommendation recommended to the Secretary of the Navy that Petitioner be discharged with an OTH. CNP's recommendation was approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) on 8 December 2006. Petitioner's was subsequently discharged on 31 January 2007 for misconduct with an OTH.

d. At the time of Petitioner's discharge, he was issued a Certificate of Release or Discharge from Active Duty (DD Form 214). Block 12a. of Petitioner's DD Form 214 erroneously reflects his date of entry as 3 April 1999. Block 12.c. erroneously reflects his net active service during the reporting period as 7 years, 9 months, and 29 days.

e. Petitioner states the matter was a civilian case, and his military service was not affected. He contends had no other civilian cases or other charges since that time, and states, a review of his military record will show early promotion from boot camp, early qualifications, and selection to officer candidate program, good conduct ribbon, and admiral's letters.

CONCLUSION:

Upon review and consideration of reference (b), all the evidence of record, the Board concludes that Petitioner's record warrants partial favorable action. The Board determined that Petitioner's DD Form 214 that was issued upon his discharge in 2007 should be corrected to accurately capture his active duty start date and net active service, i.e. blocks 12.a. and 12.c.

Regarding Petitioner's request for a discharge upgrade, the Board determined relief is not warranted. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade and contentions that his misconduct involved a civilian case and did not affect his military service. Further, he argues that he has no further misconduct since the event and otherwise performed well in the Navy. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his civilian misconduct, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct that involved the sexual assault of a minor. Further, the Board was not persuaded by Petitioner's argument that the civilian nature of his misconduct had no effect on his military performance. The Board determined that Petitioner's conduct was discrediting to the Navy and severely compromised his ability to perform his duties as a Naval Officer. As a result, the Board concluded Petitioner's conduct

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constituted a significant departure from that expected of a Naval Officer and continues to warrant an OTH characterization. Despite Petitioner's contentions of good post-discharge character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your 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 corrective action.

RECOMMENDATION:

That a review of Petitioner's record be conducted to determine his correct date of entry onto active duty upon his commissioning and his net active service during that period.

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) which corrects Blocks 12.a. and 12.c. based on the results of the record review.

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

8/17/2022

[REDACTED]
Executive Director
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