



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

[REDACTED]  
Docket No: 4213-22

Ref: Signature date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)  
(c) USD Memo of 25 Aug 17 (Kurta Memo)  
(d) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

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. Enclosure (1) applies.
2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 19 August 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 the references.
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. Petitioner enlisted in the Navy and began a period of active duty on 19 September 1977. In February 1978, he received counseling after being dropped from submarine duty due to being environmentally unadaptable due to lack of interest and motivation. The following month, he underwent surgery to remove an infected cyst from his back; his medical records from June of 1978 indicate the wound was still open and healing due to poor hygiene.
  - c. From 21 August 1978 to 29 August 1978, Petitioner absented himself without authority and, upon his return, received nonjudicial punishment (NJP) for a violation of Article 86 days. Shortly after completing his 21 days of restriction, he tested positive for mononucleosis and was

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sent home to his family to convalesce. Petitioner stayed past his convalescent period and remained in an unauthorized absence (UA) status from 31 October 1978 until 11 September 1979. After his return to military authority, he elected to consult with counsel and to not waive his right to refuse NJP. He was subsequently charged on 19 October 1978 with a single specification of violating Article 86 for his extended period of UA. He elected to request separation in lieu of trial for the good of the service; accompanying his request, he included a personal, handwritten 14-page single spaced statement along with five affidavits in support of his reason for requesting separation; all outlining his family's hardship circumstances if he were incarcerated or required to complete his service rather than be discharged. The Commandant, Fifth Naval District, approved Petitioner's administrative separation under Other Than Honorable conditions for the good of the service, and he was discharged on 8 January 1980.

d. Petitioner contends, through counsel, his absence was unavoidable due to significant hardship his immediate family was suffering following the institutionalization of his mother due to mental illness and his father's subsequent abandonment of their family fruit business. He describes that he only discovered how dire the situation was after being sent home to quarantine and convalesce from his infectious illness in September of 1978. He asserts that his assistance to his family was necessary to ensure their long-term livelihood and that he was the only person able at the time to provide the necessary labor until his brother finally returned – at which time Petitioner returned to the military to face the consequences of his absence. He additionally contends that, upon his return home and discovery of the situation, he attempted to formally request a hardship discharge by seeking assistance from his Chief who he claims ignored him and would not assist him in submitting the forms even though the Navy "knew" Petitioner was "illiterate." His counsel asserts that this alleged denial of assistance was tantamount to an arbitrary and capricious denial of his request for a hardship discharge. He elaborates that the Navy knew of Petitioner's illiteracy because it resulted in him being kicked out of submarine school and that he would have qualified for a hardship discharge if he had received the requested assistance. Additionally, Petitioner contends that the lost time in August of 1978 documented in his discharge record is erroneous because he was being treated for post-surgery back pain during that time, which he states is reflected in his medical records. Finally, Petitioner contends that his post-discharge behavior and accomplishments merit consideration of an upgraded character of discharge. In support of his request, he provided six character letters, evidence of his employment for over 30 years with Federal Express, and documentation showing his involvement in several personal business efforts.

#### CONCLUSION:

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

With respect to Petitioner's assertions of error and injustice, the Board did not concur with his claim of error regarding his documented lost time because the Board found that his service record clearly documents that he accepted NJP for the subject offense, and he submitted no evidence to counter the assumption of regularity regarding documentation of that UA period. Additionally, while the Board acknowledged that the circumstances affecting Petitioner's family

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may have qualified for a hardship discharge if he had in fact requested one, the Board observed that Petitioner submitted no evidence in support of his contention regarding his purported request for a hardship discharge which he largely based on a claim of illiteracy. The Board found this claim unsupported by his records in light of the content and quality of his hand-written 14-page request for separation which he wrote almost contemporaneously with his claimed effort to obtain a hardship discharge. Further, the Board notes that his removal from the submarine program was documented as being due to lack of motivation and interest, with no indication of academic difficulty, and the only other potential evidence supporting this claim of illiteracy is his sibling's reference to him having a learning disability which did not prevent him from successfully completing high school. Regarding the contentions made through Petitioner's counsels which insinuate his inability to understand the scope and import of the paperwork at the time of his separation, the Board additionally noted that Petitioner was represented by legal counsel who, as a matter of due diligence, presumptively ensure that his client made an informed request for discharge under other than honorable conditions. Finally, in determining to grant relief, the Board noted Petitioner's misconduct and does not condone it; however, the Board considered the totality of Petitioner's favorable matters with respect to clemency sufficient to outweigh the misconduct of his prolonged period of UA which, at its heart, involved significant mitigating circumstances. The Board also observed that his post-discharge character evidence strongly reaffirms the extent of his lifelong commitment to ensuring the well-being of his family. Accordingly, the Board determined that it is in the interest of justice to grant the requested relief.

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. Based on his record of misconduct, the Board concluded that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Ultimately, the Board determined the recommended relief effectively addresses any injustice in Petitioner's record.

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 that for the period ending 8 January 1980, he was issued a "General (Under Honorable Conditions)" discharge.

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

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.

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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.

9/8/2022

[REDACTED]