



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

[REDACTED]
Docket No: 4395-22
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, XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) USECDEF 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 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

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 naval record be corrected to make certain changes to his DD Form 214.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 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, to include 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 enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner enlisted in the Navy and began a period of active service on 18 September 1996. Petitioner's enlistment physical, on 29 May 1996, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On 4 January 1997, Petitioner reported for duty on board the [REDACTED] in [REDACTED], [REDACTED].

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d. On 6 February 1997, the Petitioner received non-judicial punishment (NJP) for a period of unauthorized absence (UA) that lasted eight days. Petitioner did not appeal his NJP.

e. Unfortunately, the administrative separation documentation is not in Petitioner's service record. On 6 March 1997, Petitioner's separation physical noted no psychiatric or neurologic issues or symptoms. Ultimately, after serving for less than six (6) months on active duty, on 7 March 1997, Petitioner was discharged from the Navy for a pattern of misconduct with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

f. Post-discharge, Petitioner provided evidence that he honorably served in the [REDACTED] National Guard, Army Reserve, and [REDACTED] Guard. In addition, Petitioner provided evidence that he honorably served as a Peace Officer in [REDACTED].

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's primary request merits relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) taking into consideration the favorable reentry codes he received in his latest military contracts and his law enforcement honorable discharges, Petitioner is requesting the BCNR to change his reentry code to RE-1, and (b) Petitioner is in the process of seeking employment with the Department of Justice (DoJ), and in order to enhance his chances of obtaining such DoJ position, he needs a higher reentry code. Based on this review and given the totality of the circumstances, the Board determined purely as a matter of clemency that Petitioner's request does merit relief in the form of certain administrative changes to Petitioner's DD Form 214 given his stellar post-service conduct.

The Board noted that even under the presumption of regularity, multiple errors are present on Petitioner's DD Form 214. First, Petitioner's record only indicates he had one NJP, but the narrative reason erroneously states a pattern of misconduct. Second, Petitioner's separation code indicates the commission of a serious offense, but an eight-day UA does not rise to a level of a serious offense under the Uniform Code of Military Justice. Lastly, the description of Petitioner's GEN characterization on his DD Form 214 is inartful and needs correction. Based on these errors, the Board concluded it was appropriate to change Petitioner's narrative reason for separation to Secretarial Authority along with associated changes to his separation authority and code.

Notwithstanding the relief granted below, the Board did not find a material error or injustice with the Petitioner's discharge characterization of service, and under the presumption of regularity determined that Petitioner's discharge from the Navy and separation with a GEN characterization was warranted under the totality of the circumstances. The Board, however, did not believe that Petitioner's record was otherwise so meritorious as to deserve relief in the form of a discharge

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upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his brief Navy military record. The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge characterization solely for the purpose of facilitating veterans benefits, retirement eligibility, or enhancing educational or employment opportunities.

The Board determined that characterizations under Other Than Honorable or GEN are generally warranted for misconduct and are appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case a GEN discharge was appropriate. The Board also concluded that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Accordingly, the Board concluded the Petitioner was assigned the correct characterization of service based on the totality of his circumstances, and that such characterization was proper and in compliance with all Navy directives and policy at the time of his discharge.

The Board carefully considered any matters submitted regarding Petitioner's character, post-service conduct, and his notable personal/professional accomplishments. In light of the Wilkie Memo, and while not necessarily excusing or endorsing the Petitioner's minor misconduct, the Board concluded Petitioner's exceptional post-service conduct warranted relief under the totality of the circumstances and purely as a matter of clemency. The Board noted Petitioner has continued his public service and earned multiple Honorable discharges since his discharge from the Navy. Accordingly, in addition to the aforementioned changes to his narrative reason for separation, separation authority, and separation code, the Board determined it was in the interests of justice to grant Petitioner's request for a RE-1 reentry code.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner's character of service remain and correctly reflect "General (Under Honorable Conditions)," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," the separation code be changed to "JFF," and the reentry code be changed to "RE-1."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

That a copy of this report of proceedings be filed in Petitioner's naval record.

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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 Regulations, 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.

7/15/2022

