



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

[REDACTED]
Docket No: 4618-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[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), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 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 23 January 2002. Petitioner's pre-enlistment physical, on 10 January 2002, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 8 May 2002, Petitioner reported for duty on board the [REDACTED] in [REDACTED].

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d. On 29 October 2002, Petitioner received non-judicial punishment (NJP) for unauthorized absence, insubordinate conduct, failure to obey and order, and misbehavior of a sentinel. Petitioner did not appeal his NJP. Petitioner's command issued him a "Page 13" counseling warning (Page 13) documenting his NJP. The Page 13 warned Petitioner that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for an administrative separation. On 25 November 2002, Petitioner received a Page 13 warning documenting his recent physical readiness test failure.

e. On 7 August 2004, Petitioner received another NJP for misbehavior of a sentinel. Petitioner did not appeal his NJP. As a result, on 9 August 2004, Petitioner was notified of administrative separation proceedings by reason of misconduct due a pattern of misconduct and misconduct due to the commission of a serious offense. Petitioner waived his rights to consult with counsel, submit written statements, and to request an administrative separation board. Ultimately, on 22 September 2004, the Petitioner was discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

f. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was 3.0. Navy regulations in place at the time of his discharge required a minimum trait average of 2.50 in conduct (proper military behavior), to be eligible and considered for a fully honorable characterization of service.

g. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner argued that he was never asleep on watch and the actions taken against him were based on a factual error. In the absence of the factual error, Petitioner contended his discharge status would be different. Petitioner also offered one character reference letter for the Board's consideration.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in reference (b).

The Board initially determined that Petitioner's administrative separation was proper and in accordance with all Department of the Navy directives and policy at the time of his discharge.

In keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's misconduct, the Board noted the Petitioner's trait average was well above the Navy's established threshold for a General (Under Honorable Conditions) (GEN) discharge characterization. The Board also noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's cumulative misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to GEN strictly on clemency grounds is appropriate at this time.

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[REDACTED]

The Board was not willing to grant an Honorable discharge characterization and believed that Sailors should receive no higher discharge characterization than is due. 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 significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that a GEN discharge characterization was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of extraordinary clemency, that the Petitioner only merits a GEN characterization of service and no higher.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's original narrative reason for separation, separation code, and reentry code. The Board concluded the Petitioner was assigned the correct narrative reason for separation, separation code, and reentry code based on the totality of his circumstances, and that all such notations were proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

RECOMMENDATION:

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

That Petitioner's character of service be changed to "General (Under Honorable Conditions)."

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.

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.

7/26/2022

[REDACTED]
Executive Director
[REDACTED]