



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

██████████
Docket No: 6338-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
USN, XXX-XX-██████████

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 w/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 record be corrected by upgrading his discharge characterization.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 7 September 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 the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The Petitioner commenced an enlistment in the Navy on 5 March 1997. He served without incident until 27 March 1998, when he received nonjudicial punishment (NJP) for violation of the following offenses: Article 92-Wrongfully remove two dry suits from the base for personal gain, Article 121-Steal two dry suits, military property, of a value of \$2500 Article 80-Attempt to sell/return one dry suit under an alias and when informed the dry suits were stolen government property quickly left the scene, and Article 134-wrongfully concealed

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two dry suits as he the said concealer knew to be stolen. On 1 April 1998, Petitioner was notified of the initiation of administrative separation proceedings for misconduct due to the commission of a serious offense, at which point, he waived his right to consult with counsel, and a hearing before an administrative discharge board (ADB). Petitioner's commanding officer recommended Petitioner's discharge with an Other Than Honorable (OTH) character of service. On 9 April 1998, the separation authority approved and directed Petitioner's discharge with an OTH by reason of misconduct due to the commission of a serious offense. On 17 April 1998, Petitioner was so discharged. He was issued a reentry code of RE-4 and a SPD code of HKQ.

c. Petitioner contends, in part, he has changed his life and obtained several academic degrees. He explains that over the course of the last 20 years he has changed his life, and worked in a Department of Veterans Affairs hospital as a resident. Petitioner provided the following documents as evidence in support of his request to the Board: Bachelor of Science degree, Doctorate of Medicine degree, Masters in Health Services Administration degree, Resident in Podiatric Medicine certificate, Certificate of registration-Doctor of Podiatric Medicine, Controlled substance registration certificate, and Department of Justice Criminal investigation.

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (b), the Board determined that there exists an injustice warranting relief. Specifically, the Board found, Petitioner's actions warranted an OTH characterization of service at the time of his separation, given the level of misconduct for which he committed. However, the Board noted Petitioner's positive post-service conduct which included earning multiple academic degrees and working as a physician. The Board determined Petitioner's positive post service achievements significantly outweighed the misconduct he committed. In light of clemency factors set forth in reference (b), the Board voted unanimously to upgrade the Petitioner's discharge characterization to General (Under Honorable Conditions) with associated changes to his narrative reason for separation and separation code.

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. 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, the Board also concluded Petitioner's reenlistment code remains appropriate in light of his record of misconduct and unsuitability for further military service. Ultimately, the Board determined sufficient clemency was granted with the recommended relief.

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RECOMMENDATION

In view of the above, the Board directs the following corrective action:

Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, to indicate a characterization of "General (Under Honorable Conditions)," narrative reason for separation of "Secretarial Authority", separation code of "JFF", and separation authority of "MILPERSMAN 1910-164."

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

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

9/30/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]