



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

█
Docket No: 6787-22

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 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 naval record be corrected by upgrading his discharge characterization from under Other Than Honorable (OTH) conditions to General (Under Honorable Conditions).

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 7 October 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 began a period of active service on 22 May 2000. From the period beginning on 21 November 2000 to 24 October 2001, Petitioner received non-judicial punishment (NJP) on three occasions for a total of five specifications of unauthorized absence (UA), and four specifications of failure to obey a lawful order. During the aforementioned period, Petitioner was counseled on two occasions regarding his misconduct and receipt of NJP.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

On 13 June 2002, Petitioner submitted a request for separation to avoid trial by court martial (SILT) for the following charges: three specifications of UA and two specifications of failure to obey a lawful order. As part of his separation processing, Petitioner elected counsel and submitted a statement accepting full responsibility for his actions. On 18 June 2002, Petitioner's commanding officer approved Petitioner request for SILT. After Petitioner's SILT was determined to be sufficient in law and fact, on 3 July 2002, Petitioner was discharge with an OTH character of service in lieu of trial by court martial.

c. Petitioner contends, in part, he was not aware of the outcome of his decision, and that he would be barred from military benefits. Petitioner provides a copy of his DD Form 214, and three character letters with his request to the Board.

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (b), the Board determined that an injustice exists warranting relief. The Board reviewed Petitioner's evidence in support of his request for upgrade to the character of his service on the basis of clemency. The Board determined Petitioner's misconduct during his service did not warrant an OTH characterization based on the nature of the misconduct. While the Board noted that Petitioner's conduct was unacceptable and appropriately formed the basis for his administrative separation, the Board determined that a General (Under Honorable Conditions) characterization of service was appropriate given the relatively minor nature misconduct and in light of clemency factors set forth in reference (b). Using the same rationale, the Board also concluded that Petitioner's narrative reason for separation, separation code, and separation authority should be changed to reflect a Secretarial Authority separation as a matter of clemency.

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 Marine'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 for clemency, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board concluded Petitioner's reentry code remains appropriate in light of his record of misconduct and unsuitability for future military service.

Accordingly, based on a careful review of all of the facts presented, the Board concludes that Petitioner is entitled to relief as follows.

RECOMMENDATION

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating, for the period ending 3 July 2002, a "General (Under Honorable Conditions)"

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

characterization of service, "Secretarial Authority" narrative reason for separation, "JFF1" separation code, and "MARCORSEP 6214" separation authority.

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.

10/27/2022

[REDACTED]
Exdcutive Director
[REDACTED]