



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

█
Docket No: 6985-22

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 Other Than Honorable Conditions conditions to General (Under Honorable Conditions) (GEN).

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 12 December 2021 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. Although the enclosure was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 25 March 1998. On 22 September 1988, Petitioner was counseled for poor military performance and failure to report

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to his prescribed palce of duty. Petitioner was advised that failure to take corrective action could result in administrative separation. On 27 October 1988, Petitioner received nonjudicial punishment for wrongful use of a controlled substance-cocaine. On 9 November 1988, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, he decided to waive his procedural rights. On 10 November 1988, the Petitioner's commanding officer recommended that he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 23 November 1988, the separation authority approved the recommendation. On 28 November 1988, Petitioner was discharged with an OTH.

d. Petitioner contends his character of discharge was based on one isolated incident that involved a positive urinalysis. Prior to this incident, Petitioner claims he had no other performance issues and had excellent reviews. He have been an outstanding citizen, involved with countless community charitable organizations to include the local food bank and local youth groups. Petitioner also have provided transportation of family members to visit incarcerated family members.

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. Despite the Board's determination that Petitioner's actions warranted an OTH discharge characterization at the time of his separation, the Board determined clemency was appropriate in Petitioner's case. The Board noted Petitioner's positive post service conduct which included his involvement with countless community charitable organizations to include the local food bank, local youth groups, and providing transportation to family members of those who are incarcerated. In light of clemency factors set forth in reference (b), the Board determined Petitioner's positive post service achievements support upgrading his characterization of service to GEN.

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, and that a GEN discharge characterization and no higher was appropriate.

Additionally, the Board found that Petitioner's narrative reason for separation, separation code, separation authority, and reentry code remain appropriate based on the seriousness of his misconduct that included a drug offense. While the Board felt some clemency was warranted in Petitioner's case, ultimately, they concluded any injustice in his record was sufficiently addressed by the recommended corrective action.

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RECOMMENDATION

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

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) indicating a General (Under Honorable Conditions) characterization of service.

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.

1/9/2023

[REDACTED]
Exdcutive Director
[REDACTED]