



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

█
Docket No: 7130-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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Ref: (a) Title 10 U.S.C. §1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments
(2) Naval record (excerpts)

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 Certificate of Release or Discharge from Active Duty (DD Form 214) characterization of service be upgraded to general under honorable conditions.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 14 November 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, 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) regarding equity, injustice, or clemency determinations.

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 regulation within the Department of the Navy. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

b. Petitioner enlisted in the U.S. Navy and began a period of active duty on 5 June 1997. On 16 June 1999, Petitioner received nonjudicial punishment for a period of unauthorized absence (UA) totaling two days and failure to obey order or regulation. On 17 September 1999, Petitioner received a second NJP for another period of UA and failure to obey order or regulation. Subsequently, Petitioner was issued administrative remarks documenting the aforementioned deficiencies and advising him that any further deficiencies in his performance

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and/or conduct may result disciplinary action and in processing for administrative separation. Subsequently, on 21 January 2000, you received a third NJP for a period of UA, which totaled 49 days.

c. On 21 January 2000, Petitioner was notified that he was being recommended for administrative separation from the Navy by reason of Pattern of Misconduct (POM). Petitioner was advised of, and waived his procedural right, to consult with military counsel and to present his case to an administrative discharge board (ADB).

d. On 7 February 2000, Petitioner's commanding officer (CO) forwarded his administrative separation package to the separation authority (SA) recommending Petitioner be administrative discharged from the Navy by reason of POM. The separation authority (SA) approved the recommendation for administrative discharge and directed Petitioner be discharged with an Other Than Honorable (OTH) characterization by reason of POM. On 15 February 2000, he was so discharged.

e. Petitioner contends; (1) there were some situations the Navy created during his time of service that he continues to perceive as unjust, however, it does not excuse the behavior that led to his discharge, (2) he was young and did not fully understand what the repercussions of his actions would be and has been ashamed of how he conducted himself towards the end of his enlistment, (3) he has since worked hard and raised his family, and (4) he went back to school, obtained his degrees and now works as a therapist helping veterans and other marginalized individuals work through issues of substance abuse, trauma, and mental health.

f. For purposes of clemency and equity consideration, Petitioner submitted copies of his educational degrees, a CeCredential Trust document, and [REDACTED] Department of Regulatory Agencies documents.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request should be upgraded in the interests of justice. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo.

The Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in his separation from the Navy with an OTH discharge. Further, the Board found no error in Petitioner's OTH discharge by commission of a serious offense. However, in light of reference (b), after reviewing the record holistically, given the totality of the circumstances, in light of Petitioner's post-service accomplishments, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to a more appropriate characterization of service by upgrading Petitioner's discharge characterization of service to General (Under Honorable Conditions).

Notwithstanding the corrective action recommended below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was

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[REDACTED]

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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board found no error or injustice with Petitioner's narrative reason for separation, separation authority, reentry code, or separation code. Ultimately, the Board determined sufficient clemency was granted to Petitioner with the upgrading of his characterization of service to General (Under Honorable Conditions) to address any injustice in his record.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 reflecting that his character of service was General (Under Honorable Conditions).

That no further action be granted.

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

4. It is certified that 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.

