



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

[REDACTED]
Docket No: 7273-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
USN, [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)
(c) BUPERSINST 1900.8 dtd 28 Jun 1993

Encl: (1) DD Form 149
(2) Case summary
(3) 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 naval record be corrected by upgrading his characterization of service.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 16 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 references (b) and (c).

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 enclosure (1) 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 6 July 1988. On 12 February 1995, Petitioner reenlisted in the Navy for a period of 5 years of active duty.

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d. On 19 April 1995, Petitioner self-referred himself for a medical evaluation after bringing a loaded 9mm handgun to his workspace. Petitioner was initially diagnosed with general anxiety disorder with agoraphobia. Petitioner underwent a second medical assessment, based on his diagnosis, the evaluating physician recommended the initiation of administrative separation processing for the Petitioner.

e. On 26 June 1995, Petitioner was convicted at a special court martial (SPCM) for unlawfully carrying on or about his person a concealed weapon, to wit: a semi-automatic pistol. On 13 September 1995, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to the commission of a serious offense, personality disorder, and alcohol abuse rehabilitation failure. On the same day, Petitioner elected to waive his right to consult with counsel, and waived his right for review of his case before and administrative discharge board (ADB). Petitioner's commanding officer recommended Petitioner's separation with an Other Than Honorable (OTH) character of service. On 1 November 1995, the separation authority approved and directed Petitioner's discharge with an OTH character of service by reason of misconduct due to the commission of a serious offense.

f. Petitioner's record contains an administrative error. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) does not include his period of Honorable service from 6 July 1988 to 11 February 1992. Per Reference (b), Box 18 should indicate Petitioner's periods of Honorable service.

g. Petitioner contends he broke his rehabilitation agreement, and was charged with a concealed weapon on base. He argues that his command delayed his administrative board and that, since his discharge 27 years ago, he has turned his life around and worked in various professions. He would like an upgrade to have the opportunity to gain better employment. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. In light of reference (c), the Board determined Petitioner's record warrants partial relief. The Board noted Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) contains an administrative error and warrants correction. Petitioner's DD Form 214 does not indicate his period of Honorable service from 6 July 1988 to 11 February 1992, therefore change to Petitioner's record is warranted.

With regard to Petitioner's request that his discharge characterization be upgraded, 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. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Additionally, the Board considered the negative effect his

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conduct likely had on the good order and discipline of his command. Finally, the Board noted that Petitioner provided no evidence to substantiate his contentions. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading Petitioner's characterization of service or granting an upgraded characterization of service as a matter of clemency or equity.

RECOMMENDATION:

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

Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) indicating a Box 18 remark of "Continuous Honorable service from 6 July 1988 to 11 February 1992."

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

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 Regulation, 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.

12/15/2022

[REDACTED]
Executive Director
[REDACTED]