



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

█
Docket No. 7351-22

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) USECDEF Memo of 25 July 2018 "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 with 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 rank be restored to E-5.
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 23 January 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, and policies.
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 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 entered active duty with the U.S. Navy on 8 June 1976 and completed two periods of Honorable (HON) service ending on 1 September 1983. On 2 September 1983, Petitioner reenlisted for a third time. On 1 July 1986, he received NJP for failing to go to his appointed place of duty and willfully disobeying an order. On 16 November 1987, Petitioner received nonjudicial punishment (NJP) for willfully disobeying a superior commissioned officer. In August 1988, Petitioner tested positive for cocaine. As a result, on 8 September 1988,

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Petitioner was notified of his pending administrative separation action by reason of misconduct due to drug abuse, at which time he elected his right to consult with counsel and have his heard before an administrative discharge board (ADB).

d. On 19 October 1988, an ADB was held and, by a vote of 3-0, found Petitioner committed misconduct and should be discharged. By a vote of 3-0, the ADB recommended Petitioner's characterization of discharge be general under honorable conditions (GEN). Subsequently, Petitioner's Commanding Officer (CO) agreed with the ADB and also recommended he be discharge with a GEN, further capturing, "[Petitioner's] urine sample given on 26 Aug 88 tested positive for cocaine during a command directed urinalysis. Additionally, he has had several instances of unauthorized absence. His disregard for military rules, regulations, and the Navy's policy on drug abuse is counter to good order and discipline. This conduct cannot be further tolerated. The time has come that he be held accountable for his actions. His performance record is indicative of no potential for further productive naval service. I concur with the Board's recommendation that he be discharged from the naval service under general conditions and the he not be eligible for enlistment in any branch of the armed forces." On 20 December 1988, Petitioner's command requested he be discharge in absentia as he had commenced an additional period of UA. On 15 January 1989, the separation authority directed Petitioner be discharged with an other than honorable (OTH) characterization of service by reason of drug use and on 25 January 1989, he was so discharged. In directing Petitioner's discharge, the separation authority also authorized his administrative reduction in paygrade to E-3.

e. On 7 December 2011, Petitioner submitted an application with this Board requesting a discharge upgrade. The Board granted his request and upgraded his characterization of service to a general under honorable conditions (GEN).

f. Petitioner contends, (1) although his request for an upgraded discharge characterization was granted, his rank of E-5 was not restored, and (2) his rank was unjustly lowered from an E-5 to an E-3.

CONCLUSION:

The Board reviewed Petitioner's application under the guidance provided in reference (b). Upon review and consideration of all the evidence of record, the Board noted Petitioner's official military personnel file (OMPF) does not contain his upgraded discharge from the clemency received at his previous hearing. As such, the Board determined the recommended partial relief is warranted.

With regard to Petitioner's request to have his rank restored to E-5, after careful and conscientious consideration of the entire record, the Board found there was insufficient evidence to establish the existence of probable material error or injustice. The Board noted Petitioner's misconduct, as evidenced by his two NJPs and positive urinalysis for cocaine, and found his misconduct outweighed these mitigating factors. As such, the Board determined there was no error or abuse of discretion by the separation authority, pursuant to the applicable instruction, in ordering his administrative reduction in rate to E-3 upon his discharge from the Navy.

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RECOMMENDATION:

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

In accordance with instructions which governed issuance of Certificate of Release or Discharge from Active Duty (DD Form 214) at the time of Petitioner's service, Petitioner be issued a DD Form 214, for the period of 2 September 1983 to 25 January 1989, with a characterization of service as "General (Under Honorable Conditions)," separation authority as "MILPERSMAN 3630620," Separation Code of "GKK," and reentry code of "RE-4."

Commander, Navy Personnel Command is authorized to complete the remaining entries for the DD Form 214 based on Petitioner's service record.

No further changes be made to Petitioner's record.

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.

2/1/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]