



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

█
Docket No: 7674-22

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, X █

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) to Honorable.

2. The Board, consisting of █, and █, 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, 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 enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 7 December 1999. On 11 January 2001, Petitioner received nonjudicial punishment (NJP) for wrongful use of a

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USN, [REDACTED]

controlled substance. On 28 February 2001, Petitioner was administratively separated from service with an OTH discharge characterization by reason of misconduct due to drug abuse.

d. Petitioner contends he is suffering from the trauma he experienced while in service. He is very fearful of water and continues to experienced outburst while being in close situations. Petitioner does not trust anyone anymore and claims he continues suffering from nightmares. He feels the VA would be able to help him with this issues as he is incapable of affording outside medical help. For purposes of clemency and equity consideration, Petitioner submitted multiple advocacy letters that describe his post-discharge good character and positive involvement with the community.

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (b), the Board determined Petitioner's request warrants partial relief. Specifically, the Board determined it was in the interests of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions). While the Board does not condone Petitioner's misconduct and concluded his assigned OTH characterization was appropriately issued, the Board also took into consideration Petitioner's post-discharge accomplishments and good character. After weighing Petitioner's misconduct against his mitigation evidence, the Board determined clemency, in the form of a discharge upgrade, was appropriate in his case and consistent with reference (b).

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 General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board found that Petitioner's narrative reason for separation, separation authority, separation code, and reentry code remain appropriate in light of his drug abuse. Ultimately, the Board determined any injustice existing in Petitioner's record is adequately addressed with the below corrective action.

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.

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.

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USN, [REDACTED]

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.

12/7/2022

[REDACTED]

Exdcutive Director

[REDACTED]