



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

[REDACTED]
Docket No. 9129-22
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)

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 naval record be corrected to upgrade his characterization of service.
2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 20 January 2023, 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, to include reference (b).
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 interests of justice to review the application on its merits.
 - c. The Petitioner originally enlisted in the Navy and began a period of active service on 16 December 1987. Petitioner's pre-enlistment physical, on 22 May 1987, and self-reported medical history noted no psychiatric or neurologic conditions of symptoms. Petitioner admitted pre-service marijuana use and an arrest on his enlistment application.

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d. On 30 March 1988, Petitioner was disenrolled from the Nuclear Power Training Program for academic failure. On 30 July 1988, Petitioner reported for duty on board the [REDACTED] ([REDACTED]) in [REDACTED], [REDACTED].

e. On 24 July 1992, Petitioner reenlisted. At the time of his reenlistment, Petitioner's overall performance trait average as reflected on his period performance evaluations was approximately 3.7 out of a possible 4.0 rating scale.

f. On 27 January 1994, Petitioner received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). Petitioner did not appeal his NJP.

g. On 31 January 1994, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his rights to consult with counsel and to request an administrative separation board. Ultimately, on 21 April 1994, Petitioner was discharged from the Navy for misconduct with an Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's primary request does not warrant relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade and contentions that: (a) Petitioner made one mistake but was a "4.0" Sailor all career except for the offense leading to his discharge, (b) Petitioner was a "4.0" Sailor all career with multiple commendations, and (c) Petitioner is now a widow and is requesting a discharge upgrade in order to be a full veteran with benefits. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that Petitioner's record was otherwise so meritorious during his last enlistment as to deserve relief. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board concluded that illegal drug use by a Sailor is contrary to Navy core values, renders that Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow Sailors. The Board also noted that, although one's service is generally evaluated at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the basis to determine characterization of service. The

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Board determined the record clearly reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily change a military record solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities, including military enlistments. As a result, the Board determined that there was no impropriety or inequity in Petitioner's OTH discharge characterization, assigned reentry code, and his narrative reason for separation, and the Board concluded that his misconduct and disregard for good order and discipline clearly merited his receipt of an OTH. 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 granting Petitioner the relief he requested or granting relief as a matter of clemency or equity.

Notwithstanding the denial, the Board did note that the NJP forming the basis of Petitioner's OTH discharge technically occurred during his second and last enlistment that began on 24 July 1992. The Board also observed that Petitioner did not receive a DD Form 214 upon the completion of his first enlistment on 23 July 1992. Thus, the Board initially concluded that the DD Form 214 must encompass and reflect Petitioner's entire period of active service and not just his second enlistment. The Board also concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his previous enlistment was completed without any adverse disciplinary action. The Board was aware that the Department of the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistment(s).

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner be issued a new DD Form 214 for the period ending 21 April 1994, that reflects the following revised entry:

Block 12.a.: 87 DEC 16.

That Commander, Navy Personnel Command recalculate and revise the appropriate entries for Blocks 12.c. and 12.d., and any other impacted entries based on the change to Block 12.a.

That the newly issued DD Form 214 reflect the following comment added to the Block 18 Remarks section:

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“CONTINUOUS HONORABLE SERVICE FROM 16DEC1987 TO 23JUL1992.”

Following the corrections to the newly issued DD-214 for the period ending 21 April 1994, that all other information as previously listed on such DD-214 remain the same.

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 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.

2/3/2023

[REDACTED]