



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

[REDACTED]
Docket No. 0025-22
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,
XXX-XX-[REDACTED]

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 (Wilkie Memo)

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 on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 23 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, 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 the enclosure 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 17 July 2000. On 22 November 2005, Petitioner was convicted by summary court martial (SCM) for three

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instances of wrongful possession of a controlled substance-cocaine. Petitioner was sentenced to reduction to the rank of E-1, confinement, and forfeiture of pay. On 31 January 2006, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point, he decided to waive his procedural rights. On the same date, the Petitioner's commanding officer recommended he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 13 February 2006, the separation authority approved the recommendation and ordered Petitioner be separated from the Navy with an OTH discharge characterization by reason of misconduct due to drug abuse. On 24 February 2006, Petitioner was discharged.

d. Petitioner contends he is a combat veteran seeking an upgrade with the intent to apply for compensation and medical benefits from the Department of Veterans Affairs. In his statement to the Board, Petitioner states he has been struggle with several issues over the years. In particular, Petitioner claims that he was throwing up blood and was transported to the ER. The doctors performed a procedure and diagnosed him with a tear in his stomach or an ulcer that would eventually correct itself. Petitioner claims this was not the case as he keeps using medication for the same issue for over 20 years. Petitioner is not proud of the circumstances that led to his discharge and feels like he was made out to be the scapegoat of the whole entire incident. He states at the time of his offense, he was suffering from depression, anxiety, hopelessness, and many other negative feelings over the years. He describes his experiences while serving as a Corpsman in combat, specifically that he was exposed to numerous explosions, picking up body parts, 3rd degree burns, amputations, bullet wounds, open fractures, and people holding up death infants. Petitioner states he struggled with alcohol and drugs over the years following his discharge. The worst being between 2012 through 2015 when he experienced a horrible addiction to cocaine. Petitioner claims he now clean, he work as a manager for a company, spend time with his daughter, and provides assistance to a veteran who is homeless and in need of critical assistance.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of reference (b), the Board concludes that Petitioner's request warrants partial relief. In this regard, the Board noted Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH characterization. However, in light of reference (b), after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to "General (Under Honorable Conditions)."

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.

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RECOMMENDATION

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

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty DD Form 214 (DD Form 215) indicating a General (Under Honorable Conditions) characterization of service.

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

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

2/12/2023

[REDACTED]

Signed by: [REDACTED]