



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

██████████
Docket No. 292-23
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 (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 characterization of service be upgraded to Honorable.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 25 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 enlisted in the U.S. Navy and began a period of active duty on 21 October 1991. He completed his active obligated service on 19 October 1995 with an Honorable characterization of service. He immediately reenlisted on 20 October 1995. He then extended this period of enlistment on 17 October 1997 for eight months.

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d. On 7 May 1998, Petitioner was found guilty at summary court-martial for wrongful use of marijuana.

e. Unfortunately, the documents pertinent the administrative separation are not in the official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 19 June 1998 with an Other Than Honorable (OTH) characterization of service, the narrative reason for separation is "Misconduct," the separation code is "HKK," and the reenlistment code is "RE-4." The separation code indicates that he was separated for misconduct drug abuse.

f. A review of Petitioner's DD Form 214 reveals that his continuous period of Honorable service from 18 June 1991 to 19 October 1995 was not annotated.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. The Board reviewed the application under the guidance provided in reference (b). As previously explained, the Board found an error with Petitioner's DD Form 214 in that it failed to document his previous period of continuous Honorable service. Therefore, the Board deemed a correction was appropriate to address the error.

Regarding Petitioner's request to upgrade his characterization of service to Honorable, 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. However, 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. 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. While the Board carefully considered Petitioner's argument in mitigation, 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 him the relief he requested or granting relief as a matter of clemency or equity.

RECOMMENDATION:

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

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Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) indicating his continuous honorable service for the period of 18 June 1991 through 19 October 1995.

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.

2/2/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]