



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

[REDACTED]
Docket No. 0398-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[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.

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Advisory opinion of 15 February 2023

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting an upgrade to his discharge characterization of service and the addition of missing awards on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosure (2) applies.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 6 March 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, policies. In addition, the Board considered enclosure (3), an advisory opinion (AO) from Navy Personnel Command.

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 Navy and began a period of active duty on 27 April 1972. Between 31 January 1973 to 4 March 1973, Petitioner had three periods of unauthorized absence (UA) which lasted nine days, 23 hours. This resulted in nonjudicial punishment (NJP) on

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10 March 1973. On 16 August 1973, Petitioner received a second NJP for a period of UA from appointed place of duty. On 18 September 1973, Petitioner received a drug exemption grant for using marijuana in several occasions. On 3 October 1973, Petitioner was dropped from the drug local rehabilitation program. Subsequently, the Drug Rehabilitation Director recommended that Petitioner be administratively separated from Naval service. On 9 October 1973, the Petitioner's commanding officer also recommended that he be administratively separated from Naval service. However, on 19 October 1973, an Enlisted Evaluation Board recommended that Petitioner be retained in Naval service. On 12 November 1973, the Chief of Naval Personnel recommended that Petitioner be warned that further misconduct will result in administrative separation with a punitive or undesirable discharge. On 27 December 1973, Petitioner received a third NJP for a period of UA from appointed place of duty. On 14 January 1974, Petitioner was notified of the initiation of administrative separation proceedings by reason of low average of performance marks, adaptability, and numerous minor violations. Ultimately, on 18 January 1974, Petitioner was discharged with a General (Under Honorable Conditions) characterization of service by reason of early separation under an authorized program. His DD Form 214 indicates he is entitled to wear the National Defense Service Medal (NDSM).

d. On 20 April 2006, the Navy Personnel Command completed a review of the Petitioner's record and determined that he was entitled to the NDSM and the Vietnam Service Medal (VSM).

e. On 15 February 2023, the Navy Personnel Command (PERS-312) completed a review of the Petitioner's record and issued enclosure (4). The AO confirmed Petitioner is entitled to the Vietnam Service Medal (VSM).

f. Petitioner contends he was off the coast of Vietnam and was overseas. Petitioner will like to have his discharge characterization to be upgraded from General (Under Honorable Conditions) to Honorable, along with his awards and decorations showing on this DD Form 214.

CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, the Board concluded that Petitioner is entitled to the VSM. The Board relied heavily on enclosure (4) in making its determination.

Regarding Petitioner's request for a discharge characterization upgrade, the Board concluded insufficient evidence of error or injustice exists to grant Petitioner relief. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade and his contentions discussed previously. 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 NJPs and continued drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact it included drug offenses. 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

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their fellow service members. Further, the Board noted Petitioner provided no evidence in support of his application. As a result, the Board concluded significant negative aspects of Petitioner's service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. Therefore, 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 a discharge upgrade or granting an upgrade as a matter of clemency or equity.

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 215) indicating Petitioner's eligibility for the Vietnam Service Medal (VSM).

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.

3/25/2023

