



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

[REDACTED]
Docket No. 1775-23
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) BUPERSINST 1900.8 dtd 28 Jun 1993
(c) Under Secretary of Defense for Personnel memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary (excerpts)

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) conditions to Honorable.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 17 March 2023 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosure, relevant portions of Petitioner's 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 waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active service on 3 November 1992. On 20 July 1995, Petitioner received non-judicial punishment (NJP) for violation of a lawful order. On 3 November 1995, Petitioner reenlisted for a period of 4 years. On 14 June 1996, Petitioner was convicted at a summary court martial (SCM) for two specifications of conspiracy, making a failure official statement, larceny, three specifications of defrauding United States property, and two specifications of violating a general article. On 21 October 1999, Petitioner reenlisted a second time for period of four years. Petitioner received NJP for wrongful use

Subj:
MEMBER [REDACTED], USN,
XXX-XX- [REDACTED]

REVIEW NAVAL RECORD OF FORMER

marijuana on 12 January 2000. As a result, on 14 February 2000, Petitioner was notified for the initiation administrative separation proceedings by reason of misconduct due to drug abuse, at which point, he waived his right to consult with counsel and to a hearing of his case before an administrative discharge board (ADB). Petitioner's commanding officer recommended Petitioner's separation from naval service with an OTH character of service by reason of misconduct due to drug abuse. On 3 March 2000, the separation authority approved and directed Petitioner's separation with an OTH character of service by reason of misconduct due to drug abuse. On 15 March 2000, Petitioner was so discharged.

d. Petitioner's record contains an administrative error. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) does not include his period of Honorable service from 3 November 1992 to 20 October 1999. Per Reference (b), Box 18 should indicate Petitioner's periods of Honorable service.

e. Petitioner would like to upgrade his character of service so that he can purchase a home with veterans' benefits.

CONCLUSION

Upon review and consideration of all the evidence of record the Board determined Petitioner's record warrants partial relief. As discussed above, the Board noted Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) contains an administrative error and warrants correction. Petitioner's DD Form 214 does not indicate his period of Honorable service from 3 November 1992 to 20 October 1999, therefore change to the Petitioner's record is warranted.

Regarding Petitioner's request for a discharge upgrade, 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. These included, his aforementioned desire for an upgrade along with his desire to become eligible for veterans' home loan assistance. 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 NJP for drug abuse, 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. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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. 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.

Subj:
MEMBER [REDACTED], USN,
XXX-XX-[REDACTED]

REVIEW NAVAL RECORD OF FORMER

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION

Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 15 March 2000, annotating in block 18, Petitioner's continuous honorable service from 3 November 1992 to 20 October 1999.

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 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.

4/6/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]