



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

█
Docket No. 1845-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
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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 discharge be upgraded from "Other than Honorable" to "Honorable" characterization of service, and that his narrative reason for separation be changed to "Secretarial Authority."

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 2 June 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 including 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, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. The Petitioner enlisted in the United States Navy and began a period of active service on 24 October 1991.

d. On 13 November 1992, Petitioner received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA)

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totaling four days, and Article 87, for missing ship's movement. Petitioner did not appeal this NJP.

e. On 5 November 1993, Petitioner received his second NJP for violating UCMJ Article 86, for three specifications of UA totaling 16 day, and Article 92, for failure to obey an order by drinking underage. Petitioner did not appeal this NJP. He also received an Administrative Counseling (Page 13) addressing the deficiencies in his performance and conduct, specifically regarding the charges addressed at NJP.

f. On 5 January 1994, Petitioner was medically evaluated to determine his fitness for duty after alcohol was noted on breath upon report for duty. Petitioner admitted to underage drinking (2 beers the night prior) but denied alcohol abuse. His Blood Alcohol Content (BAC) was .005 and he was determined fit for duty and referred to Level I Treatment (PREVENT Class).

g. On 24 February 1994, Petitioner was referred to his third NJP for violating UCMJ Article 86, for specifications of absence from an appointed place of duty, specifically, attendance at the PREVENT Class, Article 92, for failure to obey an order by drinking underage, and Article 134, for wrongful overindulgence in liquor resulting in the incapacitation for the proper performance of duties. Instead of imposing NJP, the Commanding Officer referred Petitioner to a Summary Court Martial (SCM). On 4 April 1994, Petitioner was taken to SCM on the same charges and found not guilty on one of the five specifications of Article 86 and the sole specification under the charge of Article 134, but he was found guilty on all remaining charges. Petitioner was awarded one month confinement and forfeitures of pay.

h. On 12 April 1994, Petitioner was convicted by civilian authorities of "Driving on a Suspended License" and was sentenced to 10 days confinement to run concurrent to his military confinement.

i. On 22 June 1994, Petitioner was convicted by civilian authorities of "Assault and Battery" and "Damage to Private Property." He was sentenced to 60 days in jail (suspended), fines (suspended), and restitution.

j. On 18 August 1994, Petitioner's command initiated administrative separation proceedings by reason of misconduct due to a pattern of misconduct. Petitioner elected his right to consult with qualified counsel and waived his right to a hearing before an Administrative Separation (ADSEP) Board. Petitioner was notified that the least favorable characterization of service was an Other Than Honorable (OTH) characterization.

k. On 26 September 1994, Petitioner was again convicted by civilian authorities of "Driving on a Suspended License" and was sentenced to 10 days confinement.

l. On 21 November 1994, the ADSEP Board voted 3 to 0 that the basis for "Pattern of Misconduct" was met, and recommended separation with an OTH characterization of service.

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m. On 29 November 1994, Petitioner received his fourth NJP. The specific UCMJ violations are not contained within the service record. Petitioner did not appeal this NJP.

n. Petitioner was separated from the Navy on 24 February 1995 with an OTH characterization of service, a narrative reason for separation of "Pattern of Misconduct," a separation code of "GKA," and a reenlistment code of "RE-4."

o. Petitioner admits to his misconduct, but explains that he was young and immature at the time he committed the misconduct and is remorseful for his actions. He contends that although his "immature age-appropriate behavior was found to violate the UCMJ regulations, these offenses should not be enough to prevent [him] from obtaining an Honorable discharge." He explains that he is still living with the consequences of his mistakes 28 years after his discharge. For purposes of clemency and equity consideration, Petitioner provided evidence of post-service accomplishments, a character letter, and photos of his family.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. 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 upgraded to General (Under Honorable Conditions). In making this finding, the Board considered on Petitioner's post-discharge mitigation evidence.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave consideration to Petitioner's record of service and his age at the time of the misconduct. However, 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 otherwise not be held accountable for his actions. The Board highlighted 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. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even though flawless service is not required for an honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's repeated misconduct.

Additionally, the Board concluded Petitioner's narrative reason for separation and separation code should remain unchanged, as the basis for separation was accurately listed as misconduct. Although Petitioner provided a compelling clemency argument with regards to his characterization of service, it does not change the fact that he was separated from the service due to his extensive misconduct. Ultimately, the Board found that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

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

Petitioner be issued a new DD Form 214 indicating his character of service as “General (Under Honorable Conditions).”

No further changes be made to Petitioner’s record.

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.

6/14/2023

