



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

[REDACTED]
Docket No. 2244-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. § 1552
(b) Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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. Enclosure (1) applies.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 26 May 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, applicable statutes, regulations, and policies, to include reference (b).

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. Although Petitioner's application 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. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Petitioner enlisted in the Navy with a pre-service history of marijuana use and began a period of active duty on 12 March 1987. He was counseled on 23 March 1987 for a positive drug-use urinalysis test and placed on a surveillance program. He served successfully for the duration of his first enlistment and was honorably discharged for immediate reenlistment on 7 March 1987; however, there is no documentation of this discharge in his service record.

b. Shortly after his reenlistment, Petitioner was administratively counseled for failure to meet physical standards and was enrolled in his unit's physical conditioning program.

c. On 16 January 1992, Petitioner was frocked to the grade of E-5, however, he was administratively counseled again, on 1 April 1992, for failure to meet physical standards and

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advised that he was no longer eligible to be frocked and that his pending advancement might be withdrawn.

d. A Naval Drug Lab message of 16 April 1992 reported Petitioner's urinalysis test positive for marijuana metabolites. He declined to make a written statement in response to a preliminary inquiry of his misconduct on 20 April 1992, but he indicated that he had been having problems with his marriage.

e. Petitioner was subject to non-judicial punishment on 21 April 1992 for a violation of Article 112a of the Uniform Code of Military Justice due to his wrongful possession and use of a controlled substance. He submitted a written statement apologizing for his actions. He was also notified that same day of administrative board procedures for misconduct due to drug abuse; although he waived his rights to consult legal counsel and to a hearing before an administrative separation board, he noted that he objected to separation.

f. Petitioner's commanding officer forwarded a recommendation for his separation under Other Than Honorable conditions, which was approved on 29 April 1992 by the Commander, Navy Military Personnel Command. Petitioner was discharged, on 29 May 1992, with a final trait average of 3.9.

g. Petitioner contends that his drug use occurred during a trying time in his life when he was dealing with marital problems in addition to the added responsibility of being frocked to E-5. He submits that he turned his Navy career into a civilian career with continued support to the military mission by working on ships for the past 19 years. He also states that he has lived a clean and sober life for the past 28 years.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed his application under the guidance provided in reference (b).

The Board noted Petitioner's misconduct and does not condone it; however, the Board noted that Petitioner's sole instance of misconduct in over 5 years of otherwise Honorable and faithful service, to include a 3.9 performance trait average during his second enlistment, was a single marijuana offense. Consistent with the clemency considerations outlined in reference (b), the Board found that the favorable factors Petitioner submitted for consideration of clemency based on his post-service character outweighed his marijuana offense. Accordingly, the Board determined that it is in the interest of justice to grant the partial relief to reflect that Petitioner served under honorable conditions as well as additional relief to correct the error with respect to his omitted period of Honorable service during his first enlistment.

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 member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that

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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. Additionally, the Board concluded Petitioner's basis for separation and reentry code remains appropriate. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 29 May 1992, he was discharged with a "General (Under Honorable Conditions)" characterization of service with the additional of an entry in block 18, Remarks, specifying Petitioner's period of "Continuous Honorable Service from 12 March 1987 through 7 March 1991."

No additional changes are required.

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.

6/12/2023

