



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

█  
Docket No. 2439-23

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) Title 10 U.S.C. §1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/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 an upgrade of his characterization of service. Enclosure (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 20 September 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. 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. 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.

b. Petitioner enlisted in the Navy on 4 August 1976 and began a period of active duty.

c. On 24 March 1977, Petitioner received non-judicial punishment (NJP) on two separate occasions. Petitioner's offenses consisted of willful disobedience of a lawful order by a superior Petty Officer and assault.

d. On 4 April 1977, Petitioner issued an administrative remarks (Page 13) informing him of his assigned low traits marks in adaptability, professional performance, military appearance and military behavior. Petitioner described as a below average foodserviceman, and difficulty in completing daily routine tasks and required excessive supervision.

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e. On 24 February 1978, Petitioner convicted by a summary court-martial (SCM) of unauthorized absence (UA) totaling 33 days.

f. The record shows, on 2 March 1978, Petitioner commenced a period of UA that subsequently concluded upon his return to military authorities, on 16 May 1978, after 74 days.

g. On 20 July 1978, Petitioner issued a Page 13 counseling informing him that as a result of the "special court-martial ruling" in his case, his enlistment has been determined void in accordance with the decision of the U.S. Court of Military Appeals (USCMA) in the case of U.S. vs. Russo, 23 USCMA 511, 50 CMR 651 (Recruiter Misconduct). Petitioner was discharged from the Navy and issued a Report of Separation from Active Duty (DD Form 214) annotating his characterization of service as "None-Void Enlistment."

h. Petitioner contends the following injustices warranting relief:

(1) As a U.S. citizen he deserves to be recognized for the time he voluntarily served in the Navy; he had good intentions to make the military his career, but he did not expect to have so many inconveniences;

(2) He was very young, had no one to trust and guide him on how to pursue his career, felt used and fooled by his recruiter, his disappointment was very high and he decided to sign and leave as suggested; and

(3) The legal officer told him that they would send him his DD Form 214 to his house with his two years of service as honorable discharge, he never received it.

i. For purposes of clemency and equity consideration, Petitioner did not submit any documentation in support of his application. Additionally, the Board noted Petitioner checked the "other mental health" box on his application but did not to respond to the Board's request for evidence in support of this claim.

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants relief in the interests of justice.

After careful consideration of the policy established in reference (b), reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board determined that describing Petitioner's current character of service in this manner attaches a considerable negative and unnecessary stigma. Therefore, the Board concluded Petitioner's character of service should be changed to General (Under Honorable Conditions) (GEN).

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Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable (HON) discharge. The Board determined that an HON 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 certain negative aspects of the Petitioner's conduct outweighed the positive aspects of his military record even under the liberal consideration standards, and that a GEN discharge characterization and no higher was appropriate.

Further, although not specifically requested by the Petitioner and based on the same rationale for upgrading Petitioner's character of service, the Board also determined that Petitioner's narrative reason for separation, separation authority, and separation code should be changed to Secretarial Authority in the interests of justice. Regarding Petitioner's reentry code, the Board determined a reentry code of RE-4 is appropriate based on his unsuitability for further military service. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that, for the period ending 20 July 1978, his characterization of service was "General (Under Honorable Conditions), the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," the separation authority was "MILPERSMAN 1910-164," and the reentry code was "RE-4."

That no further changes be made to Petitioner's record.

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

10/4/2023

