



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

█
Docket No. 2984-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█, USN, XXX-XX-█

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

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.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 25 October 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, 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.

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. After a period of honorable service commencing on 15 October 2001, Petitioner reenlisted in the Navy on 28 November 2003. On 9 January 2006, he received non-judicial punishment (NJP) for driving while intoxicated. On 5 April 2006, he received NJP for failure to obey a lawful order and making a false official statement. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to pattern of misconduct and misconduct due to

Subj: REVIEW OF NAVAL RECORD OF F [REDACTED]

[REDACTED], USN, XXX-XX-[REDACTED]

commission of a serious offense. After he waived his rights, his commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the CO's recommendation and directed a GEN characterization of service by reason of misconduct due to commission of a serious offense. On 21 April 2006, he was so discharged. Upon his discharge, he was issued a DD Form 214 that did not reflect his period of continuous Honorable service from 15 October 2001 to 27 November 2003.

d. Petitioner states that he went through a traumatic separation and divorce due to his wife having an affair, he is currently a member of his company's veteran employee resource group, serves as a team lead member at church, help disabled veterans dealing with mental issues and has been employed with the same company since being discharged. The Board noted he checked the "Other Mental Health" box on his application but he chose not to respond to the 13 April 2023 letter from the Board requesting supporting evidence for his claim. For purposes of clemency and equity consideration, the Board noted he provided advocacy letters that described post-service accomplishments.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that given the totality of her circumstances, Petitioner's request merits partial relief. Specifically, the Board noted that the NJPs forming the basis of Petitioner's GEN discharge occurred during his last enlistment that began on 28 November 2003. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to reflect that his previous enlistment was completed without any serious adverse disciplinary action. The Board was aware that the DoN no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

In regard to Petitioner's request to upgrade his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire to upgrade his discharge character of service and his previously discussed contentions.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact his conduct had on the good order and discipline of his command. Further, the Board noted that there is no evidence in his record, and he submitted none, to support his contentions. Ultimately, the Board concluded that Petitioner was fortunate to receive a GEN discharge based on his history of misconduct. As a result, the Board concluded significant negative aspects of his active service outweigh the positives and continues to warrant a GEN characterization of service. While the Board carefully

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

considered the evidence Petitioner provided in mitigation, 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 him the relief he requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence he provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION:

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 21 April 2006, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 15OCT2001 TO 27NOV2003."

Following the corrections to the DD Form 214 for the period ending 21 April 2006, that all other information as previously listed on such DD Form 214 remain the same.

That 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.

11/6/2023

