



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

[REDACTED]
Docket No. 3989-23
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo of 25 July 2018 "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 characterization service be changed to a General (Under Honorable Conditions).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 May 2023, and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and 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 enclosure (1) was not filed in a timely manner, it is in the interest of justice to review the application 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 U.S. Navy and began a period of active duty on 24 June 1993. After a period of Honorable service, he immediately reenlisted and commenced his second period of active duty on 11 March 1998.

b. On 13 October 1998, Petitioner received non-judicial punishment (NJP) for being absent from his place of duty. He was issued a counseling warning, on 28 February 2000, for his performance and conduct due to his extended unauthorized absence (UA). He received his second NJP, on 22 March 2000, for 21 days UA.

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c. On 5 June 2000, he received his third NJP for wrongful use of marijuana. As a result, he was notified of administrative separation processing for pattern of misconduct and drug abuse. He waived his right to an administrative separation board. The Commanding Officer made his recommendation to the Separation Authority that he be discharged for drug abuse and be assigned an Other Than Honorable (OTH) characterization. The Separation Authority accepted the recommendation and directed Petitioner be discharged.

d. Petitioner was discharged on 23 June 2000 and issued a Certificate of Release or Discharge from Active Duty (DD Form 214). The DD Form 214 reflects the date entered active duty this period of 24 June 1993 and separation date this period of 23 June 2000 but does not document his first period of continuous Honorable service.

e. Petitioner argues that he requires a discharge upgrade in order to qualify for Department of Veterans Affairs benefits.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. In light of reference (b), the Board concluded Petitioner should be issued DD Form 215 to document his period of Honorable service from 24 June 1993 through 10 March 1998.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for a characterization of service change to General. 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. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of his misconduct and the fact it included 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. Furthermore, 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 liberally and 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. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit relief beyond the recommended corrective action below.

RECOMMENDATION

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

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Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215), indicating in block 18 his period of continuous Honorable service from 24 June 1993 until 10 March 1998.

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

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

6/7/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]