



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

█
Docket No. 4564-23

Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █,
USN, █

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) Naval record (excerpts)

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 for an upgrade of his characterization of service and changes to his narrative reason for separation and separation code to reflect a Secretarial Authority discharge.

2. The Board, consisting of █ and █, reviewed Petitioner's allegations of error and injustice on 27 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 and began a period of active duty on 22 October 1992.

c. On 29 June 1996, Petitioner received non-judicial punishment (NJP) for wrongful use of marijuana.

d. Unfortunately, the documents pertinent to Petitioner's administrative separation are not present in his official military personnel file. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their

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[REDACTED] XXX-XX-[REDACTED]

official duties. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), he was administratively separated from the Navy on 29 July 1996, with an "Under Other Than Honorable (OTH) Conditions" characterization of service, narrative reason for separation is "Misconduct due to Drug Abuse," reentry code is "RE-4," and separation code is "HKK," which corresponds to misconduct due to drug abuse.

e. Petitioner contends the following injustices warranting relief:

(1) While stationed onboard the [REDACTED], he reported being depressed by the atmosphere of working in a shipyard because the environment was loud, dirty and the morale was poor, he did not receive any treatment for his depressive symptoms while in service; and

(2) He was discharged from the Navy for a single incident of marijuana use, he acknowledges that his use of marijuana was wrong, however, his single incident of misconduct was infrequent and non-violent.

f. For purposes of clemency and equity consideration, the Board noted Petitioner provided a statement on his behalf, advocacy letter, and post service certificates of accomplishments.

CONCLUSION

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

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. However, the Board reviewed Petitioner's application under the guidance provided in reference (b).

The Board noted Petitioner's disciplinary infraction and does not condone his misconduct, which resulted in his OTH characterization of service. However, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with 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 changed to "General (Under Honorable Conditions)." In making this determination, the Board considered the evidence Petitioner submitted that documented his post-discharge good character and successful employment.

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 service 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 General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate.

Further, 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

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justice. However, the Board concluded Petitioner's reentry code should remain unchanged 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 Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 29 July 1996, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the SPD code assigned was "JFF," and the separation authority was "MILPERSMAN 1910-164."

That no further correction action be taken on Petitioner's naval 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.

10/13/2023

[REDACTED]