



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

█
Docket No. 4628-23
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. 1552
(b) USD 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 (Wilkie Memo)

Encl: (1) DD Form 149 w/attachments

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 naval record be corrected to reflect that his discharge characterization be upgraded to Honorable, that his record reflect that he served a full 24 months of active duty, and that his reason for discharge be changed to reflect it was under "medical conditions."

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 28 September 2023 and pursuant to its regulations, determined that 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 naval 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 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. The Petitioner enlisted in the Navy and commenced a period of active duty on 26 September 1989. On 24 January 1991, the Petitioner received notification of the initiation of administrative separation processing using notification procedure and his rights in connection therewith. Ultimately, Petitioner was discharged on 25 March 1991. Upon his discharge, the Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) reflected that his service was characterized as Honorable. Later, in April 1991, Petitioner received a correction to his DD Form 214, by way of the issuance of a DD Form 215, changing his Honorable characterization of service to General (Under Honorable Conditions) (GEN). On 3 April 1991, the Petitioner's commanding officer transmitted notice of the Petitioner's discharge to the Navy

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Personnel Command. In his transmittal letter, the commanding officer explained that the Petitioner was discharged after the Petitioner voluntarily self-referred himself due to drug use. In the commanding officer's remarks, he explained that he believed the Petitioner's self-referral was honest.

b. In his petition, Petitioner contends that he had a medically undiagnosed condition while he was on active duty, and that he requested help that he did not receive. He also asserts that he suffered from trauma as a result of constant harassment and being beaten and that nothing was done about it even after he reported it. He further asserts that he was discharged with an Honorable discharge and then he received a letter from his command after separation that changed his status to GEN. In addition, the Petitioner explained that he has had a long time to deal with these issues from his experiences and he started to get his life together and he has a master's degree.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. Specifically, in light of reference (c) and the Petitioner's commanding officer's remarks that he believed the Petitioner's voluntary self-referral was sincere, the Board determined Petitioner's narrative reason for discharge should be changed from Misconduct – Drug Abuse (Use) to Secretarial Authority. In making its finding, the Board also considered the Petitioner's post-service accomplishments in determining that the change of the narrative reason for Petitioner's discharge will remove the stigma associated with it reflecting that he was discharged due to misconduct based on drug use, particularly in light of the Petitioner's post-service efforts to improve his life by way of obtaining higher education.

Despite the Board's recommendation to grant partial relief as a matter of injustice, the Board concluded the preponderance of the evidence does not support any other relief requested by the Petitioner, including providing him a discharge "under medical conditions," as he requested. The Board determined that the Petitioner did not provide any medical records contemporaneous to his service that demonstrated he exhibited signs of unfitness due to a disability condition. The Board found that the Petitioner was in fact discharged due to his self-referral due to his use of illegal drugs, and that there was no evidence in his record, and he provided none, that he should have been referred to the Physical Evaluation Board for a fitness determination. Further, the Board determined the Petitioner's record provided no support, and he provided none, for his request that his record be changed to provide him constructive credit such that his record reflects that he served a full 24 months of active duty.

Finally, 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 certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record and that a GEN discharge characterization and no higher was appropriate. Therefore, while the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or

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injustice that warrants granting Petitioner the relief he requested or granting the requested 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 to support a discharge upgrade. Based on the same rationale, the Board also concluded his assigned reentry code remains appropriate. 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 directs the following corrective action.

Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting, for the period ending 25 March 1991, his narrative reason for separation was "Secretarial Authority," SPD code was "JFF," and his separation authority was "MILPERSMAN 1910-164."

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.

10/22/2023

[REDACTED]

Executive Director
Signed by: [REDACTED]