



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

■
Docket No. 7564-23

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, ■■■■■■■■■■

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.

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 3 September 1991.

c. On 6 July 1994, Petitioner received non-judicial punishment (NJP) for wrongful use of marijuana.

d. On 15 July 1994, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. Petitioner was advised of, and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board (ADB).

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e. On 18 August 1994, Petitioner's commanding officer (CO) recommended to the separation authority (SA) that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service.

f. On 8 September 1994, the SA approved the recommendation for administrative discharge, and directed Petitioner's OTH discharge from the Navy by reason of misconduct due to drug abuse. On 27 September 1994, Petitioner was so discharged.

g. Petitioner contends that at the time of his discharge he was dealing with the death of his son, which was a traumatic event in his life, he struggled for years after the death. As evidence, he provided a death certificate of his son that corresponds to the time period prior to his misconduct.

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.

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)."

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

Finally, the Board determined Petitioner's narrative reason for separation, separation code, separation authority, and reentry code should remain unchanged based on the nature of his misconduct. 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:

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That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 27 September 1994, Petitioner's character of service was "General (Under Honorable Conditions)."

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]