



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

██████████
Docket No. 7737-23

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) 10 U.S.C. § 1552
(b) USECDEF Memo 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 naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214 following his involuntary discharge for a personality disorder.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 5 January 2024, 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 interests of justice to review the application on its merits.

c. The Petitioner enlisted in the U.S. Navy and began a period of active duty service on 8 June 1971. Petitioner's pre-enlistment physical examination, on 29 March 1971, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 23 August 1972, Petitioner received non-judicial punishment (NJP) for unauthorized absence (UA). Petitioner did not appeal his NJP.

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[REDACTED]

e. On 19 September 1973, Petitioner underwent a psychiatric evaluation. The Medical Officer noted Petitioner's adjustment problem was worsening and diagnosed Petitioner's with an immature personality. The Medical Officer (MO) noted Petitioner's character behavior disorder and recommended Petitioner's administrative separation based on his immature personality and continued adjustment problems to military service.

f. On 5 September 1973, Petitioner's command initiated administrative separation proceedings by reason of unsuitability on the basis of his duly diagnosed character and behavior disorder. Petitioner declined his right to submit a statement on his own behalf. The lowest eligible discharge characterization Petitioner could have received was General (Under Honorable Conditions) (GEN). In the meantime, on 27 September 1973, Petitioner received NJP for UA, and for disobeying a lawful order. Petitioner did not appeal his second NJP. On 1 November 1973, an Enlisted Performance Evaluation Board approved and directed Petitioner's separation for unsuitability. Ultimately, on 19 November 1973, Petitioner was discharged from the Navy with a GEN discharge characterization and assigned an RE-4 reentry code. The Board specifically noted on Petitioner's DD Form 214 that the narrative reason for separation was "Unsuitability Discharge" with a separation code of "265" which corresponded to "character and behavior disorders."

g. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was approximately 2.933. Navy regulations in place at the time of his discharge recommended a minimum trait average of 3.0 (out of a possible 5.0) in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service.

h. Petitioner contended, in part, that Vietnam era veterans were affected by the pre-planned reduction in forces, and that "SPN" codes were wrongfully applied causing such service members to receive GEN discharges. Petitioner further argued that had he known and understood about TBI and PTSD, that a treatment or therapy could have been started.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief.

In keeping with the letter and spirit of current policy, the Board determined that it would be an injustice to label one's discharge as being for a diagnosed character and behavior disorder. Describing Petitioner's service in this manner attaches a considerable negative and unnecessary stigma, and fundamental fairness and medical privacy concerns dictate a change. Accordingly, the Board concluded that Petitioner's discharge should not be labeled as being for a mental health-related condition and that certain remedial administrative changes are warranted to the DD Form 214.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an Honorable discharge characterization or any other requested relief.

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[REDACTED]

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. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence Petitioner provided in support of his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization under GEN or under Other Than Honorable conditions (OTH) is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, the Board noted that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions.

The Board noted that personality disorders are characterized by a longstanding pattern of unhealthy behaviors, dysfunctional relationships, and maladaptive thinking patterns. They are not conditions considered unfitting or disabling, but render service members unsuitable for military service and consideration for administrative separation. Accordingly, the Board concluded that Petitioner's diagnosed personality disorder was a non-disabling disorder of character and behavior, and that it should not be considered a mitigating factor in his misconduct because it did not impair his ability to be accountable for his actions or behaviors. The Board also determined the record clearly reflected that Petitioner's misconduct was intentional and demonstrated he was unfit for further service.

Additionally, the Board determined that an Honorable discharge was appropriate only if the Sailor's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, and that even though flawless service is not required for an Honorable discharge, in this case only a GEN discharge characterization was appropriate. 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 Petitioner a discharge upgrade or granting him additional relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board concluded that Petitioner's discharge upgrade request did not merit relief, and that he only merits a GEN characterization of service and no higher.

The Board also did not find a material error or injustice with the Petitioner's reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with all Department of the Navy directives and policy at the time of his discharge.

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RECOMMENDATION:

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

That block 9c of Petitioner's DD Form 214 reflect the following changes: the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MILPERSMAN 1910-164," and the separation code be changed to "JFF."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.

1/17/2024

