



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

█
Docket No. 7868-23

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 with attachments
(2) Case Summary
(3) Subject's 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 that his naval record be corrected to upgrade his characterization of service and change his narrative reason for separation in light of current guidelines as reflected in reference (b). Enclosures (2) and (3) apply.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 20 November 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.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. On 10 November 1952, Petitioner enlisted in the United States Navy.

d. On 24 February 1953, Petitioner was found guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for two specifications of unauthorized absence (UA) (22 days and 13 days respectively), and Article 134, for breaking restriction. He was sentenced to 30 days of confinement and forfeitures of pay.

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e. On 4 April 1953, Petitioner was found guilty at Summary Court Martial (SCM) of violating UCMJ Article 86, for a two-day period of UA, and Article 121, for possession of the property of another (stole hub caps off a fellow service member's car). He was awarded 15 days solitary confinement and forfeitures of pay.

f. On 3 March 1954, Petitioner was found guilty at non-judicial punishment (NJP) of violating UCMJ Article 86, for a period of UA totaling 77 days.

g. On 31 August 1954, Petitioner was ordered to appear in front of his Commanding Officer, but instead began a period of UA and remained absent for the rest of his time in service.

h. While in a UA status, Petitioner was arrested by civilian authorities and convicted on charges of Grand Theft Auto on 20 September 1954. Petitioner testified that he was solely responsible for the theft and that the other individual had no knowledge that the vehicle had been stolen. He was sentenced to six months of confinement, five years of probation, restitution, and loss of his [REDACTED] license for five years.

i. On 13 October 1954, an administrative discharge board convened and found that the basis for separation (civilian conviction) was met, and recommended "discharge as undesirable by reason of misconduct." Petitioner admitted to grand theft auto and, in regards to the periods of UA, he stated that "even though I realize it is wrong to go home without authorized liberty, I have felt it was necessary on several occasions."

j. Petitioner was separated from the Navy on 14 January 1955 with an Other Than Honorable (OTH) characterization of service and an "RE-4" reentry code.

k. Petitioner contends that he is 88 years old, and since his discharge over 60 years ago, he has many post-service achievements. He is a family man, volunteers his time to various needs, and has been gainfully employed. He has provided character letters in support of his request.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's misconduct and does not condone his actions, which subsequently resulted in an OTH discharge. However, in light of reference (b), after reviewing the record holistically, and given the totality of the circumstances, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions) (GEN). The Board recommended a characterization upgrade as a matter of clemency, as Petitioner provided compelling evidence of post-service accomplishments, supported by character letters, that warrants relief.

The Board also concluded that Petitioner's narrative reason for separation and separation code should also be changed. Although the basis for separation was accurately listed as misconduct, Petitioner provided a compelling clemency argument and the Board concluded that due to the

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substantial passage of time, no purpose is served by continuing to label his separation as misconduct.

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable discharge. The Board gave liberal and special consideration to Petitioner's record of service and his youth at the time he committed the misconduct. However, the Board determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board highlighted 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. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. The Board noted that even though flawless service is not required for an Honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's purposeful misconduct.

Further, the Board did not find an injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was assigned the correct reentry code based on the totality of the circumstances, and that such reentry code was proper and in compliance with all Department of the Navy and Marine Corps directives and policy at the time of his discharge. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 14 January 1955, his character of service was "General (Under Honorable Conditions)," his narrative reason for separation was "Secretarial Authority," the separation authority was "MILPERSMAN 1910-164," and the separation code was "JFF."

That no further changes be made to Petitioner's 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 Regulations, Section 723.6(e)), and

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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.

12/1/2023

