

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],
USN, [REDACTED]

e. On 5 June 2001, Petitioner received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA), totaling 21 days and two specifications of wrongful use of marijuana.

f. Subsequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. Petitioner elected his procedural right, to consult with military counsel, and to present his case to an administrative discharge board (ADB).

g. On 10 July 2001, Petitioner received a third conviction by civilian authorities for driving under the influence and possession of marijuana.

h. On 30 August 2001, an ADB was convened, and determined that the preponderance of the evidence supported a finding of misconduct, and recommended that Petitioner be separated from the Navy with an Other Than Honorable (OTH) characterization of service.

i. The commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) concurring with the ADB's recommendation and stating in part that Petitioner "clearly demonstrated his refusal to uphold Navy Core Values, and after nine years of naval service and clear knowledge of the absolute prohibition of illegal drug use, he knowingly used marijuana on more than one occasion while on active duty." 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 24 October 2001, Petitioner was so discharged. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) did not reflect his previous period of continuous Honorable service.

j. Petitioner contends that he had "10 years" of esteemed Honorable service. His mental health dramatically declined after his oldest brother was in a fatal car crash in 1997 while he was on deployment in the [REDACTED]

k. The Board noted Petitioner checked the "Other Mental Health" box on his application but chose not to respond to the Board's letter of 3 October 2023 requesting evidence in support of his claim. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement on his behalf but no supporting documentation describing post-service accomplishments or advocacy letters.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief. Specifically, the Board noted Petitioner has a period of Honorable service from "3 June 1992 to 8 July 1999." The Board determined Petitioner's DD Form 214 fails to document this period of service. Applicable regulations authorizes the language "Continuous Honorable Active Service" in Block 18 (Remarks) of the DD Form 214, when a service member has previously reenlisted without being issued a DD Form 214, and was separated with a discharge characterization except "Honorable." As a result, the Board determined Petitioner's naval record shall be corrected to reflect his continuous Honorable active service.

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Notwithstanding the recommended corrective action below, the Board found no error in Petitioner's OTH characterization of service discharge for separation due to drug abuse. 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. These included, but were not limited to, Petitioner's desire for a discharge upgrade and the previously mentioned contentions raised by Petitioner in his application.

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant grant the requested relief. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved multiple drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Additionally, the Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative impact Petitioner's conduct had on the good order and discipline of his command. Further, the Board found that Petitioner's misconduct was intentional and made him unsuitable for continued naval service. Furthermore, the Board also determined that the evidence of record did not demonstrate that he was not responsible for his conduct or that he should otherwise not be held accountable for his actions. The Board noted that Petitioner was provided an opportunity to correct his deficiencies during your service, however, he continued to commit additional misconduct. Further, the Board noted that Petitioner did not provide any evidence, other than his statement, to substantiate his contention. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization for drug abuse. 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 the relief he requested or granting the requested relief as a matter of clemency or equity.

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:

Petitioner shall be issued a DD Form 215, for the period ending 24 October 2001, with correction to the Remarks Section, Block 18, annotating "Continuous Honorable Active Service: "3 June 1992 to 8 July 1999."

That no further changes be made to Petitioner's 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.

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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.

11/29/2023

