



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

█
Docket No. 8251-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with enclosures
(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 discharge be upgraded.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 20 November 2023, and, pursuant to its regulations, determined 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 his naval service records, and applicable statutes, regulations, and policies.

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 review the application on its merits.

c. Petitioner began active duty in the Navy on 23 July 1997 and, after a period of continuous Honorable service, immediately reenlisted on 17 April 2001. On 8 April 2004, Petitioner received nonjudicial punishment (NJP) for the wrongful use of a controlled substance.

d. Unfortunately, the documents related to Petitioner's administrative separation are not in his official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly

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discharged their official duties. His Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 7 May 2004 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct," his separation code is "HKK," and his reenlistment code is "RE-4." His DD Form 214 did not document his previous period of continuous Honorable service from 23 July 1997 to 16 April 2001.

d. Petitioner contends: (1) he served in the Navy for seven years and received several awards and recommendations, (2) during his time in the Navy his father, also a Navy veteran, suddenly became deathly ill and he did whatever it took as a son to get to his father's side, (3) he currently has stage 4 melanoma/cancer which has spread to his brain, liver, spleen and ribs, (4) he had his brain tumor removed, (5) he was never told he could upgrade his discharge, (6) he needs medical benefits, (7) his wife lost her job and he is losing coverage at the end of November 2023, (8) he is married and has two beautiful daughters who he wants to be around to walk down the aisle, and (9) he served his country proudly and would do it all over again.

e. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement, medical and mental health documents. Additionally, the Board noted that Petitioner checked the "Traumatic Brain Injury" and "Other Mental Health" boxes on his application but chose not to respond to the Board's letter requesting supporting evidence of his claims.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants favorable action in the form of partial review. Specifically, the Board determined Petitioner's DD Form 214 should be corrected to document his period of continuous Honorable service.

With regard to Petitioner's request that his characterization of service be upgraded, 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 discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by his NJP, outweighed any mitigating factors presented. In making this finding, the Board considered the seriousness of his misconduct and the fact it included a drug offense. 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. Finally, absent material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits. 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 of service. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Wilkie Memo and

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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. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) indicating his continuous Honorable service for the period of 23 Jul 1997 to 16 April 2001.

No further changes be made to Petitioner's record.

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.

12/4/2023

