



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

██████████
Docket No. 8469-23

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) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting an upgrade to his character of service. Enclosure (2) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 25 October 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, 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 review the application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 9 November 1998. After a period of continuous Honorable service, Petitioner reenlisted on 5 October 2002. On 19 December 2003, Petitioner received NJP for wrongful use of marijuana. As a result, he was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse. Petitioner waived his right to consult with counsel, and his right to a hearing of his case before an administrative discharge board (ADB). Subsequently, the separation authority approved and directed Petitioner's discharge with an Other Than Honorable (OTH) character of

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USN, [REDACTED]

service by reason of misconduct due to drug abuse. On 21 January 2004, Petitioner was so discharged.

d. Upon his discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) which erroneously fails to annotate his continuous Honorable period of service from 9 November 1998 to 4 October 2002.

e. Petitioner contends he had Honorable active service, and his discharge is inconsistent with his record of service. Additionally, he requests upgrade to his character of service to qualify for veterans' benefits. For purposes of clemency and equity consideration, the Board noted Petitioner provided documentation describing post-service accomplishments.

CONCLUSION:

Upon review and consideration of the evidence of record and reference (b), the Board determined Petitioner's record warrants partial relief. As noted previously, Petitioner's DD Form 214 does not indicate his continuous Honorable period of service from 9 November 1998 to 4 October 2002, and requires correction.

Regarding Petitioner's request to upgrade his character of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire for a discharge upgrade and his previously discussed contentions. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your 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. 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. Additionally, the Board considered the likely negative effect Petitioner's conduct had on the good order and discipline of his unit. 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. Even in light of reference (b) 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 directs the following corrective action:

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 21 January 2004, which indicates his continuous period of Honorable service from 9 November 1998 to 4 October 2002.

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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.

11/18/2023

