



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

██████████
Docket No. 8554-23

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, XXX-XX-██████████

Ref: (a) 10 U.S.C. §1552
(b) USECDEF Memo of 25 July 2018 "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

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 his characterization of service be upgraded to Honorable.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 22 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 enlisted in the U.S. Navy and began a period of active duty on 23 May 1983.

d. On 7 February 1986, Petitioner received his first non-judicial punishment (NJP) for wrongful use of marijuana.

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e. Petitioner received his second NJP, on 7 March 1986, for wrongful use of marijuana based on a positive urinalysis.

f. Petitioner was notified of administrative separation processing for drug abuse and waived his right to an administrative separation board. The Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that he be discharged for drug abuse and be assigned an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed Petitioner's discharge. He was so discharged on 28 April 1986.

g. Petitioner contended that he tested positive and went to NJP and admitted his wrongdoing. He also contended that he did not use marijuana between the two NJPs. For purposes of clemency and equity consideration, the Board noted Petitioner provided documentation describing post-service accomplishments.

CONCLUSION:

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

While the Board does not condone Petitioner's misconduct, it concluded clemency is appropriate in his case. In making this finding, the Board noted Petitioner's post-discharge accomplishments and his performance in the Navy prior to his two NJPs. Therefore, after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board determined Petitioner's characterization of service should be changed to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Further, the Board concluded that Petitioner's reason for separation, separation authority, separation code, and reentry code remain appropriate in light of Petitioner's record of misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

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Petitioner be issued a new DD Form 214, for the period ending 28 April 1986, stating that his characterization of service was "General (Under Honorable Conditions)."

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.

12/5/2023

