



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

█  
Docket No. 8959-23

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, 25 Jul 18 (Wilkie Memo)

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. Enclosures (1) and (2) apply.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 1 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 Petitioner's 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, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 15 October 1991. The Petitioner fulfilled his service obligation on 13 September 1993, immediately reenlisted, and began another period of active duty.

d. From 25 January 1995 through 15 April 1997 he received five non-judicial punishments (NJP) that included an incident of drug abuse. As a result, he was processed for administrative separation for drug abuse and pattern of misconduct.

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[REDACTED], USN, XXX-XX [REDACTED]

e. Unfortunately, documents pertinent to the NJP's are not in the official military personnel file (OMPF). Notwithstanding, 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.

f. Petitioner's commanding officer (CO) forwarded the administrative separation package to the separation authority (SA) recommending that Petitioner be administratively discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Marine Corps by reason of drug abuse. On 24 July 1997, Petitioner was so discharged. Upon his discharge, he was issued a DD Form 214 that did not document his previous period of continuous Honorable service from 15 October 1991 through 13 September 1993.

g. Petitioner contends that he received injuries to both of his knees that caused a level of pain that was unbearable after re-aggravating the injuries several times. He contends that he tried marijuana for the pain relieving properties and continued to use it because of how much more effective it was over ibuprofen. Petitioner's record substantiates he was on limited duty at the time of his administrative separation for misconduct. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide documentation describing post-service accomplishments or advocacy letters.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, as discussed above, the Board noted Petitioner's period of continuous Honorable service was not documented on his DD Form 214 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in characterization 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 the Wilkie Memo. These included, but were not limited to, Petitioner's desire for a discharge upgrade and the contentions previously discussed. After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In making this finding, the Board considered the seriousness of the misconduct and the fact it included 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. Further, the Board was not persuaded by Petitioner's arguments that he utilized marijuana to ease pain in his knees because he would have access to stronger pain relieving medication as part of his treatment.

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[REDACTED], USN, XXX-XX [REDACTED]

As a result, the Board concluded his conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner the relief he requested or granting relief as a matter of clemency or equity.

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), for the period ending 24 July 1997, indicating his continuous Honorable service for the period of 15 October 1991 through 13 September 1993.

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.

11/21/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]