



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

█
Docket No. 9872-23

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 Jul 18 (Wilkie Memo)

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

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, through counsel, filed enclosure (1) requesting an upgrade in discharge from Bad Conduct Discharge (BCD) to Honorable characterization (HON) and a change to his reason for separation to Secretarial Authority. Enclosures (1) and (2) apply.
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 20 December 2023, and pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and 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 service on 20 February 1980.
 - d. On 20 October 1980, Petitioner received non-judicial punishment (NJP) for larceny. Subsequently, for the period of August 1980 through December 1981, Petitioner was awarded the Navy Achievement Medal (NAM), by Commander █, for superb performance as a Radioman. However, on 14 May 1985, Petitioner was convicted at Special

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Court-Martial (SPCM) of wrongful disposition, by sale, of 22 pillows, 24 blankets, and 24 bed sheets, of wrongful appropriation of one buffer, and of receipt of stolen property. He was sentenced to an \$800.00 fine, confinement until the fine was paid—not to exceed 3 months, reduction in rank to E-1, and a BCD.

e. On 16 May 1985, Petitioner waived clemency review of his case, and requested appellate leave. The following day, on 17 May 1985, he paid the fine in full. On 25 July 1985, the Convening Authority approved the sentence, suspending confinement. After completion of all levels of review, on 21 January 1986, Petitioner was discharged with a BCD.

f. Petitioner's performance marks upon discharge were OTA/MB: 3.8/3.78.

g. Petitioner contends the following injustice warranting relief: (1) Twenty years have passed since his discharge, and the ongoing stigma has surely satisfied the punitive purpose of the discharge, and (2) it would be inherently unjust to let the stigma continue for the rest of his life.

h. In support of his application, Petitioner submitted his counsel's brief, his DD Form 214, enlisted evaluations, and four 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.

The Board found no error in Petitioner's BCD characterization of service discharge awarded at SPCM. However, the Board reviewed Petitioner's application under the guidance provided in reference (b).

The Board noted Petitioner's disciplinary infractions and does not condone his misconduct, which resulted in his BCD characterization of service. However, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). After reviewing the record holistically, and given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to "General (Under Honorable Conditions)." In making this determination, the Board considered the significant passage of time since Petitioner was discharged, and the evidence Petitioner submitted documenting his post-discharge good character. Further, the Board took into consideration Petitioner's NAM and good performance marks during service, in addition to the fact he quickly and fully paid his court-martial fine.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an HON discharge. The Board determined that an HON 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 Petitioner's conduct and/or performance, including the NJP Petitioner received for larceny prior to his SPCM conviction, outweighed the positive aspects of his military record, and

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that a General (Under Honorable Conditions) discharge characterization, and no higher, was appropriate. Further, the Board determined Petitioner's narrative reason for separation, separation code, and reentry code remain appropriate based on his SPCM conviction. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

In view of the above, the Board recommends the following corrective action.

RECOMMENDATION

That Petitioner be issued a new DD Form 214, for the period ending 21 January 1986, indicating his character of service as "General (Under Honorable Conditions)."

That no further changes be made to Petitioner's record.

That 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.

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.

1/12/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]