



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

█
Docket No. 10414-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, █,
USN, █

Ref: (a) 10 U.S.C. 1552
(b) USECDEF Memo, "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 that his characterization of service be upgraded from a General (Under Honorable Conditions) to an Honorable, his reentry and separation codes be changed on his Certificate of Release or Discharge from Active Duty Form (DD Form 214), his previous four years of Honorable service be captured on his DD Form 214, DFAS cancel the repayment of his reenlistment bonus and the interest accrued, all of the tax money withheld for the past 22 years be returned, his VA (Department of Veterans Affairs) benefits be reinstated, and any additional actions necessary to correct or mitigate these problems be directed.

2. The Board, consisting of █ and █, reviewed Petitioner's allegations of error and injustice on 5 February 2024 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 and began a period of active service on 22 May 1995. He completed a period of Honorable (HON) service, extended his enlistment on 29 January 1996 for 14 months,

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and reenlisted on 21 May 1999. Petitioner's separation evaluation report states, "during medical examination requested by [Petitioner], Navy doctors discovered the presence of a controlled substance in [Petitioner's] urine sample; a substance which was not prescribed to him."

d. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his 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, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 16 March 2001 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct," his reenlistment code is "RE-4," and his separation code is "HKK," which is consistent with a discharged due to drug abuse. His DD Form 214 did not document his period of continuous Honorable service from 22 May 1995 through 21 May 1999.

d. Petitioner contends, (1) he was the victim of a racist and homophobic doctor who stated, "I am going to get you out of the Navy," and eventually "forged" the results of Petitioner's urinalysis, (2) he incurred PTSD (Post-traumatic stress disorder) as a result of being a black gay man who had to hide his sexuality and lifestyle for fear of being discovered, outed, or hurt, (3) he disclosed he was gay during a Mediterranean cruise but recanted his statement alleging he was having a bad day, (4) as a result of his fears he also developed problems sleeping, (5) he also was subjected to noise and now has hearing problems and speaks loudly too, which has affected his work life, (6) he had no disciplinary problems and was even assigned gate guard duty but this assignments was taken away by an HIV doctor, (7) he was never given an option to simply resign without being penalized, be medically discharged, or receive an Honorable discharge, and (8) HIV positive people are now able to serve. Additionally, the Board noted Petitioner checked the "PTSD" and "Other Mental Health" boxes on his application but chose not to respond to the 13 December 2023 letter from the Board requesting evidence in support of this claim.

e. For purposes of clemency and equity consideration, the Board noted Petitioner provided character letters, his resume, employment verification, a personal verification report, a self-certification of continuous service, a Department of Veterans Affairs (VA) Office of Information and Technology Product Development letter, a VA Security and Investigation Center Contractor/Employee Fingerprinting Request Form, a Declaration for Federal Employment form, a VHA Service Center Contractor PIV Sponsorship form, a certificate honoring the memory of [REDACTED] service to our country, medical documents, a copy of his DD Form 214, VA documents, a treasury department letter, a [REDACTED] training program letter, and a Pest Control certificate of training.

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 relief. Specifically, as discussed, the Board noted Petitioner's DD Form 214 does not contain his period of continuous Honorable service and requires correction.

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With regard to Petitioner's requests, 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 aforementioned requests and contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, regarding Petitioner's request that his characterization of service be upgraded to Honorable and that his reentry and separation codes be changed on his DD Form 214, the Board determined that his misconduct, as evidenced by his drug abuse discharge, outweighed any mitigating factors presented. In making this finding, the Board considered the seriousness of his misconduct and the fact it involved 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. Further, while the Board considered Petitioner's contention that he was discharged based on his homosexuality and race, the Board noted Petitioner provided no evidence to substantiate his contention that he was discharged improperly. Therefore, the Board was not persuaded by his arguments of injustice and error. As a result, the Board concluded significant negative aspects of Petitioner's service outweighed the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner a discharge upgrade or granting an upgrade as a matter of clemency or equity.

With regard to Petitioner's remaining requests, based on the rationale for finding his discharge was proper, the Board determined relief was not warranted. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's request does not merit any additional relief.

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 16 March 2001, indicating his continuous Honorable service for the period of 22 May 1995 to 20 May 1999.

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

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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.

2/15/2024

