



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

█
Docket No. 0075-24
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) SECDEF 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 (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 that his discharge characterization of service be upgraded on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosure (2) applies.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 26 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, 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 18 April 1996. Upon his enlistment, Petitioner failed to disclose his past criminal activity. On 25 June 1996, Petitioner was counseled concerning fraudulent induction as evidence of his failure to disclose required enlistment eligibility information; specifically, failure to disclose evading arrest, speeding, and

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improper license plates fines. Petitioner received a waiver and was advised that any further deficiencies in performance or conduct may result in processing for administrative separation. On 8 August 1997, Petitioner began a period of unauthorized absence (UA) which lasted 1 hour and 34 minutes. On 15 June 2000, Petitioner was honorably discharged from the Navy by reason of immediate reenlistment. On 16 June 2000, Petitioner began a second period of active duty service. On 10 February 2005, Petitioner extended his enlistment contract. On 20 April 2007, Petitioner received nonjudicial punishment (NJP) for a period of UA and making a false official statement. On the same date, Petitioner was counseled concerning his previous UCMJ violations leading to NJP. Petitioner was advised that failure to take corrective action could result in administrative separation. Ultimately, on 11 August 2007, Petitioner was discharged with a General (Under Honorable Conditions) discharge characterization of service by reason of misconduct due to commission of a serious offense. His DD Form 214 failed to annotate his continuous period of Honorable service.

d. Petitioner contends he was on authorized leave from his ship but was required to go to a physical therapy appointment for a back injury. Petitioner states he missed the appointment because he had no one who could take care of his son. Petitioner claims he was discharged erroneously, and he also states he was going through a divorce and was experiencing depression and anger issues with his wife. Additionally, the Board noted Petitioner checked the "PTSD" box on his application but chose not to respond to the Board's request for supporting evidence. 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 the evidence of record, the Board determined Petitioner's request warrants partial relief. As discussed, the Board determined Petitioner's DD Form 214 contains an error since it does not document his aforementioned period of continuous Honorable service.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. 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 his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board determined Petitioner already received a large measure of clemency when his command assigned him a GEN characterization of service despite the fact his offenses qualified for processing with an Other Than Honorable characterization. As a result, the Board concluded significant negative aspects of Petitioner's service outweighed the positive aspects and continues to warrant a GEN characterization. Even

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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 the relief he requested or granting the requested relief as a matter of clemency or equity.

RECOMMENDATION:

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 11 August 2007, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 18APR1996 TO 15JUN2000."

That 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.

3/14/2024

