



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

█
Docket No. 299-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█ USN, XXX-XX-█

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 discharge be upgraded and his narrative reason for separation and reenlistment code be changed.

2. The Board, consisting of █, █ and █, reviewed Petitioner's allegations of error and injustice on 24 January 2024 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. After a period of Honorable service that commenced on 26 September 1996, Petitioner reenlisted in the Navy on 25 September 2000. On 12 October 2001, civil authorities arrested Petitioner for violation of probation and sentenced him to 30 days confinement. On 26 October 2001, Petitioner was released from confinement. On 9 November 2001, he received non-judicial punishment (NJP) for being in an unauthorized absence (UA) status for eight days. Subsequently, Petitioner was notified of pending administrative separation action by reason of misconduct due to drug abuse. On 19 December 2001, a preliminary inquiry of the circumstances involving his civil

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conviction determined Petitioner failed to disclose his arrest of illegal drug possession prior to reenlisting. After electing to waive his rights, Petitioner's commanding officer (CO) forwarded his package to the separation authority (SA) recommending his discharge by reason of misconduct due to drug abuse with a General (Under Honorable Conditions) (GEN) characterization of service. The SA approved the CO's recommendation and directed a GEN characterization of service due to drug abuse. On 25 January 2002, he were so discharged. Upon his discharge, he was issued a DD Form 214 that did not document his period of continuous Honorable service from 26 September 1996 to 24 September 2000.

d. Petitioner states that he was charged with less than one ounce of marijuana, could not complete probation due to being deployed, the marijuana did not belong to him, the Police report was inaccurate, he was not a troubled Sailor and he is married with four kids, volunteers in the community, is enrolled in school, and is receiving counseling.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded Petitioner's request merits partial relief. As previously discussed, Petitioner's DD Form 214 does not document his previous period of continuous Honorable service. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to show his Honorable period of service. The Board was aware that the Department of the Navy no longer issues a separate DD Form 214 to enlisted personnel at the completion of each individual enlistment, and instead makes appropriate notations in the Block 18 Remarks section upon their final discharge or retirement from the armed forces reflecting such previous enlistments.

In regard to Petitioner's request to upgrade his characterization of service and change his narrative reason and reenlistment code, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire to change his record and his previously discussed contentions. For purposes of clemency and equity consideration, the Board noted Petitioner provided a personal statement and transcripts describing post-service accomplishments.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined Petitioner's misconduct as evidenced by his NJP and civil conviction, outweighed the potential mitigating factors. 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 or possession 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 or possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also considered the likely negative impact Petitioner's conduct had on the good order and discipline of his command. Further, while the Board took into consideration Petitioner's contentions, the Board noted that there is no evidence in his record, and he submitted none, to substantiate his allegations.

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Finally, due to Petitioner's violation of the Navy's zero tolerance policy, the Board determined he already received a large measure of clemency based on his assigned characterization of service. As a result, the Board concluded negative aspects of Petitioner's service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence Petitioner provided 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 him the relief he requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence he provided was insufficient to outweigh the seriousness of his misconduct. Accordingly, given the totality of the circumstances, the Board determined Petitioner's request does not merit any additional relief.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action:

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 25 January 2002, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 26SEP1996 TO 24SEP2000."

Following the corrections to the DD Form 214 for the period ending 25 January 2002, that all other information as previously listed on such DD Form 214 remain the same.

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.

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 Regulations, 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.

2/8/2024

