



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

[REDACTED]
Docket No: 4234-16
APR 18 2017

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN,
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149
(2) Case Summary
(3) Subject's naval record (excerpts)
(4) District Court of [REDACTED] order dtd 26 Jan 07

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Navy, filed enclosure (1) with this Board requesting the correction of his last name on his Report of Separation from the Armed Forces of the United States (DD Form 214) to [REDACTED] and that his other than honorable (OTH) characterization of service be upgraded. Enclosures (1) through (3) apply.

2. The Board reviewed Petitioner's allegations of error and injustice on 15 February 2017 and, pursuant to its regulations, determined that partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval 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 Petitioner's application on its merits.

c. Petitioner enlisted in the Navy and began a period of active duty on 26 Aug 1991. On 12 November 1992, he received nonjudicial punishment for wrongful use of cocaine and marijuana. Subsequently, he was notified of pending administrative separation by reason of misconduct due drug abuse at which time he waived his procedural rights to consult with legal counsel and to present his case to an administrative discharge board (ADB). His commanding officer recommended an under other than honorable (OTH) conditions discharge by reason of

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[REDACTED]

drug abuse. The discharge authority approved the recommendation and directed separation under other than honorable conditions by reason of misconduct and on 23 December 1992, he was discharged.

- d. On 26 January 2007, the Petitioner was granted a name change from the District Court of [REDACTED] changing his last name to [REDACTED]

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (4), the Board concludes Petitioner's request warrants partial favorable action. In this regard, the Board concludes that Petitioner's record should be corrected.

The Board noted that the record shows Petitioner was notified and waived his procedural right to present his case to an ADB. In doing so, he gave up his first and best opportunity to advocate for a more favorable characterization of service. Additionally, there is no provision in law or regulations that allows for recharacterization of a discharge due solely to the passage of time.

In view of the foregoing, the Board finds the existence of an error or injustice warranting the following corrective action.

RECOMMENDATION

a. That Petitioner's naval record, specifically, Block 1 of the DD Form 214, be corrected to reflect the name [REDACTED]

b. That Petitioner be issued a new DD Form 214 vice a DD Form 215.

c. That no further relief be granted.

d. 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.

[REDACTED]
Recorder

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[REDACTED]

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.

[REDACTED]
Executive Director