



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

■  
Docket No. 229-24

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,  
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Ref: (a) Title 10 U.S.C. §1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/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 for an upgrade of his characterization of service to General (Under Honorable Conditions) (GEN) and reinstate his rank to E-5.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■ and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 22 May 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, 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Navy and began a period of active duty on 26 October 2000.

c. On 15 July 2004, Petitioner received non-judicial punishment (NJP) for wrongful use of a controlled substance. As punishment, Petitioner was awarded 14 days restriction, 14 days extra duty, forfeiture of pay, and reduction in rank.

d. Consequently, Petitioner was notified that he was being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and

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[REDACTED]

drug abuse. Petitioner was advised of and waived his procedural right to consult with military counsel, and to present his case to an administrative discharge board.

e. Petitioner's commanding officer (CO) recommended to the separation authority (SA) that Petitioner be administratively discharged from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed Petitioner's OTH discharge from the Navy by reason of misconduct due to drug abuse. On 27 August 2004, Petitioner was so discharged.

f. Petitioner contends the following injustices warranting relief:

- (1) He served honorably during war time and made a poor decision while he was off duty;
- (2) He was mentally dealing with his actions that he performed in support of our nation and made a one-time lapse in judgement;
- (3) His indiscretions never interfered with his service and completion of duty;
- (4) He always received outstanding and above normal reviews and accommodations from his superiors; and
- (5) Due to President Biden's federal pardon of those convicted of using marijuana, he feels that it should apply to service members that served honorably and with distinction.

## CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice.

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. However, the Board reviewed Petitioner's application under the guidance provided in reference (b).

The Board noted Petitioner's disciplinary infraction and does not condone his misconduct, which resulted in his OTH 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 determined the interests of justice are served by upgrading his characterization of service to General (Under Honorable Conditions) (GEN) and changing his basis for separation to Secretarial Authority.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable 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 the Petitioner's conduct and/or performance outweighed the positive

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[REDACTED]

aspects of his military record, and that a GEN discharge characterization and no higher was appropriate.

Furthermore, regarding Petitioner's request for reinstatement of his paygrade to E-5, the Board discerned no impropriety or inequity in Petitioner's paygrade at the time of his discharge based on his NJP for drug abuse. Finally, the Board concluded Petitioner's reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board determined that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new Certificate of Release from Active Duty (DD Form 214) reflecting that, for the period ending 27 August 2004, Petitioner's character of service was "General (Under Honorable Conditions)," the narrative reason for separation was "Secretarial Authority," the separation authority was "MILPERSMAN 1910-164," and the SPD code assigned was "JFF."

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

That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

6/12/2024

