



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

█  
Docket No. 1879-24

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 of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) requesting his characterization of service be upgraded. Enclosures (1) through (3) apply.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 4 March 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. Petitioner enlisted in the Navy and began a period of active service on 20 July 1989.

d. On 19 January 1991, Petitioner received non-judicial punishment (NJP) for sleeping on post.

e. On 30 April 1993, Petitioner re-enlisted for six years at the rank of SM3 (E-4).

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f. On 10 November 1993, Petitioner was issued an administrative remarks (Page 13) counseling concerning deficiencies in his performance and/or conduct, specifically: operating a vehicle without a license and domestic assault. He was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Block 54 of Petitioner's periodic evaluation from 8 June 1993 to 30 June 1994 recommended Petitioner for advancement and retention, but also noted that he was found guilty of misdemeanor assault in the state of [REDACTED] District court in October 1993.

g. On 8 August 1994, Petitioner was found guilty of driving while under the influence (DWI) on 4 August 1994. His license was suspended for three months, and he was assigned to driving school, community service, and fines. On 8 November 1994, Petitioner received NJP for UA on the date of his DWI, with the entirety of his award suspended for six months.

h. On 16 June 1995, Petitioner was questioned by Naval Criminal Investigative Services on suspicion of conspiracy to commit credit card fraud, larceny, and larceny from the US mail. Petitioner stated that [REDACTED] took [REDACTED] mail while Petitioner was working in the Post Office, but Petitioner did not report the theft. Petitioner then gave [REDACTED] social security number to [REDACTED] his request. Petitioner also admitted that he and [REDACTED] bought alcohol on three separate occasions using [REDACTED] credit card. Petitioner claimed that he assumed [REDACTED] had permission to use [REDACTED] card.

i. On 23 June 1995, Petitioner was notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to civilian conviction. Petitioner waived his rights to consult counsel, submit a statement, or have his case heard by an administrative discharge board (ADB). The Separation Authority subsequently directed his discharge with an OTH characterization of service, and he was so discharged on 13 October 1995. Petitioner's DD Form 214 did not document his period of continuous Honorable service from 20 July 1989 through 29 April 1993.

j. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade, on 9 September 1996, based on their determination that his discharge was proper as issued.

k. Petitioner contends that he has a period of prior Honorable service, that his wife at the time was a drug addict and was causing problems on base and leaving the kids unattended, and that he took a voluntary discharge during his second enlistment after being held responsible for everything his wife's actions. He also claims that he and his ex-wife have been divorced for eighteen years and he has custody of their children. Petitioner provided two advocacy letters and a personal statement.

## 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. Specifically, as discussed, the Board noted Petitioner's DD Form 214 fails to document the Petitioner's period of honorable service from 20 July 1989 to 29 April 1993 and requires correction.

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Notwithstanding the recommended corrective action below, the Board found no error or injustice in Petitioner's OTH characterization of service discharge for misconduct due to civilian conviction. 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 desire for a discharge upgrade and the previously mentioned contention raised in his application.

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant granting the relief requested. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely discrediting effect it had on the Navy. The Board also considered the likely negative impact Petitioner's repeated misconduct had on the good order and discipline of his command. Finally, the Board did not find evidence of the Petitioner being held accountable for any misconduct other than his own. Therefore, 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 the relief he requested or granting him relief as a matter of clemency or equity.

In view of the above, the Board directs the following corrective action.

#### RECOMMENDATION

That Petitioner be issued a correction to DD Form 214 (DD Form 215) indicating a period of continuous Honorable service from 20 July 1989 to 29 April 1993.

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 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.

3/26/2024

