



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

█  
Docket No. 2606-24  
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) 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 and dates of service be changed 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 6 May 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 3 August 1976. During a period commencing on 27 May 1977 to 6 July 1978, Petitioner received nonjudicial punishment (NJP) in nine occasions for two instances of failure to obey a lawful order, resisting apprehension, aggravated assault, three instances of unauthorized absence, stealing, disrespect towards a superior petty officer, nuisance, assault, and disrespectful in language towards a

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superior officer. Consequently, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement and waived his procedural rights. Petitioner's commanding officer recommended that he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to frequent involvement. The Chief of Naval Personnel ordered that Petitioner's discharge be held in abeyance pending further observation of member's conduct. Subsequently, Petitioner was assigned marks of 2.6 in professional behavior and adaptability due to his work being only adequate, his negative attitude being disruptive to the good order, and conviction by civilian criminal court. Ultimately, the separation authority approved and ordered that Petitioner be administratively separated from the Navy with an OTH discharge characterization by reason of misconduct due to frequent involvement. On 15 February 1979, Petitioner was so discharged. Upon his discharge from service, Petitioner was issued a DD Form 214 with an erroneous date of entry listed as "04 August 1978" vice "03 August 1976."

d. Petitioner contends he had a bad experience on ship which have haunted him up to this date. He also checked the "PTSD" box on his application but chose not to respond to the Board's request for supporting evidence of his claim. For purposes of clemency and equity consideration, 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. Specifically, as previously discussed, the Board determined Petitioner's DD Form 214 erroneously documents his entry onto active duty and requires correction.

Regarding Petitioner's request to upgrade his characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in his case in accordance with the Wilkie Memo. These included, but were not limited to, Petitioner's desire for a discharge upgrade and his sole contention.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board considered that Petitioner was provided multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 a discharge upgrade or granting an upgrade as a matter of clemency or equity.

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

RECOMMENDATION:

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) to reflect the correct date he entered active duty as "3 August 1976" vice "4 August 1978."

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.

5/29/2024

