



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

█
Docket No. 2919-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
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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

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 his discharge be upgraded to Honorable.

2. The Board consisting of █, reviewed Petitioner's allegations of error and injustice on 22 April 2024, and, pursuant to its regulations, determined that 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, and policies including 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 U.S. Marine Corps and began a period of active duty on 31 August 1999. On 26 January 2001, Petitioner tested positive for wrongful use of a controlled substance-marijuana. On 26 March 2001, Petitioner was evaluated by a substance abuse counselor; at which point, it was determined that he did not meet the cannabis abuse or dependency criteria. On 25 May 2001, Petitioner was counseled concerning his involvement with illegal drugs. On 1 June 2001, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and he exercised his right to a

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[REDACTED]

case hearing by an Administrative Discharge Board (ADB). Petitioner's commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 30 July 2001, Petitioner decided to waive his right to an ADB hearing. Subsequently, the separation authority approved and ordered an OTH characterization of service by reason of misconduct due to drug abuse. On 20 August 2001, Petitioner was so discharged.

d. Petitioner contends he did not understand the impact of the character of service he received and his lack of understanding led him to waive his rights. Petitioner states his service administration records are negative for evidence of disciplinary infractions until August 2001. Petitioner claims he tested positive due to innocent ingestion during a social event. Post discharge, Petitioner claims he went on to play collegiate football for [REDACTED] University and graduated with a Bachelor of Science in Industrial Technology Engineering. Petitioner was drafted by the [REDACTED] but played in the [REDACTED] with a team in [REDACTED]. He later served as both a police officer and firefighter for six years before earning his law degree. He contends that, for more than 20 years, he has been an upstanding citizen and serve the members of his community. Finally, Petitioner states he has been battling cancer and chemotherapy adjustments as a result of leukemia.

e. For purposes of clemency and equity consideration, Petitioner provided copies of his resume, character letter, and evidence of post-discharge accomplishments including his degrees and certifications.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions. However, in light of reference (b) and, after reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to "General (Under Honorable Conditions)." In making this finding, the Board considered Petitioner's extensive post-discharge accomplishments and weighed it against his single instance of drug abuse.

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 aspects of his military record and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board found no error or injustice with Petitioner's basis for separation or reentry code. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 20 August 2001, indicating his characterization of service was "General (Under Honorable Conditions)."

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 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.

5/14/2024

