



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

█
Docket No. 4335-24

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 be upgraded 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 13 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 with a drug enlistment waiver and began active duty on 21 October 1985. On 3 March 1986, Petitioner received nonjudicial punishment (NJP) for failure to obey a lawful order. On 27 January 1988, Petitioner received NJP for dereliction of duty and making a false official statement. On 25 February 1988, Petitioner was counseled concerning dereliction in the performance of his assigned duties and the submission of falsified report.

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[REDACTED], USN, [REDACTED]

Petitioner was advised that failure to take corrective action could result in administrative separation. On 22 August 1988, Petitioner reenlisted and began a second period of active duty. On 24 June 1992, Petitioner reenlisted and began a third period of active duty. On 12 August 1994, Petitioner received NJP for two instances of fraternization. On 18 October 1995, Petitioner received NJP for wrongful use of a controlled substance-marijuana. Consequently, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse. Petitioner decided to waive his procedural rights and his commanding officer recommended that he be administratively separated from the Navy with an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation and ordered Petitioner be discharged by reason of misconduct due to commission of a serious offense. On 29 November 1995, Petitioner was so discharged. At the time of his discharge, Petitioner was issued a DD Form 214 that did not document his period of continuous Honorable service from 22 August 1988 through 23 June 1992. Petitioner was issued a DD Form 214 for his first period of active duty.

d. Petitioner contends he was an exceptional and dedicated Sailor and his evaluations speak for themselves. Although he admits to making some poor personal decision, Petitioner feels strongly that he would have made the Navy a career. Petitioner claims there is not a day that goes by that he does not regret those mistakes. His experiences in the Navy led him to HVAC business since 1996. Petitioner claims to have never had a drug addiction or any alcohol problems and is a responsible family provider. For purposes of clemency and equity consideration, the Board noted Petitioner provided an advocacy letter that described his post-service accomplishments.

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 contains an administrative error since it does not reflect his continuous Honorable service from 22 August 1988 to 23 June 1992.

Regarding Petitioner's request for a discharge upgrade, 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, his desire for a discharge upgrade and his previously discussed contentions.

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 the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board found that Petitioner's conduct showed a complete disregard for military authority and regulations.

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[REDACTED] USN, [REDACTED]

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. While the Board carefully considered the evidence he submitted in mitigation and commends him for his post-discharge accomplishments, 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 the requested relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct.

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) for the period ending 29 November 1995, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 22AUG1988 TO 23JUN1992."

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.

5/31/2024

