



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

██████████
Docket No. 5110-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
██████████

Ref: (a) 10 U.S.C. §1552
(b) USECDEF 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

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 be upgraded.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 29 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, 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 entered active duty with the Navy on 27 July 1989.

d. On 26 February 1990, Petitioner received non-judicial punishment (NJP) for absence from appointed place of duty and failure to obey a lawful order. On 17 April 1991, Petitioner received NJP for unauthorized absence (UA). On 29 September 1994, a special court-martial (SPCM)

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[REDACTED]

convicted Petitioner of committing carnal knowledge and sodomy with a child under 16. He was sentenced to confinement for 25 days, forfeiture of pay, and reduction to E-3. On 2 November 1994, Petitioner received NJP for being in a UA status for four days and missing ship's movement. Subsequently, he was notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. Petitioner elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that he committed misconduct due to commission of a serious offense and recommended he be retained in the Navy. On 5 April 1995, Petitioner was formerly counseled on being retained in the Navy. On 20 October 1995, Petitioner requested authorization to reenlist in the Navy and his commanding officer recommended approval. On 7 January 1997, Petitioner was allowed to reenlist in the Navy for a period of two years. However, starting on 9 April 1999, Petitioner went into a UA status that lasted until 15 May 1999, totaling 37 days. On 21 May 1999, Petitioner again went into a UA status. He was ultimately discharged, on 16 April 2001, after a court-martial sentenced him to a Bad Conduct Discharge (BCD).

e. Unfortunately, the documents pertinent to Petitioner's SPCM conviction that resulted in his discharge from the Navy are not in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 16 April 2001 with a Bad Conduct Discharge (BCD) characterization of service, his narrative reason for separation is "Court-Martial," his separation code is "JJD," and his reenlistment code is "RE-4." However, his DD Form 214 does not document his period of continuous Honorable service from 27 July 1989 to 6 January 1997.

f. Petitioner states that his characterization of service does not accurately reflects his overall service, does not align with his performance evaluations, and his behavior while serving was upstanding, demonstrated dedication, professionalism and commitment to duty. For purposes of clemency and equity consideration, the Board noted Petitioner provide supporting documentation describing post-service and in-service accomplishments and advocacy letters.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded Petitioner's request merits partial relief. As discussed, the Board noted that Petitioner's first enlistment period was not documented by a DD Form 214. Thus, the Board concluded that an administrative change to Petitioner's DD Form 214 should be made to show his first Honorable period of service not previously covered by his DD Form 214.

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 Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire to upgrade his discharge and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined Petitioner's misconduct as evidenced by his

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second SPCM and lengthy period of UA, outweighed the potential mitigating factors. In making this finding, the Board considered the likely seriousness of Petitioner's misconduct and the possible negative impact his conduct had on the good order and discipline of his command. Additionally, the Board noted that a Sailor's service is characterized at the time of discharge based on performance during the current enlistment. Finally, the board also considered that the Navy provided Petitioner an opportunity to correct his conduct deficiencies when the Navy retained him after his first SPCM and allowed him to reenlist. Despite being given the opportunity, Petitioner continued to commit misconduct, which led to his discharge.

As a result, the Board determined Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence Petitioner submitted in mitigation and commends him for his post-discharge good character, 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.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action:

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 16 April 2001, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 27JULY1989 TO 6JANUARY1997."

Following the corrections to the DD Form 214 for the period ending 16 April 2001, that all other information as previously listed on such DD Form 214 remain the same.

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 Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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[REDACTED]

corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

6/17/2024

