



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

██████████  
Docket No. 6330-24

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo, 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 characterization of service be upgraded and his date of birth on his DD Form 214 be changed. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 4 September 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 Petitioner's naval service records, and applicable statutes, regulations, and policies to included 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, the statute of limitation was waived in accordance with the Kurta Memo.

c. Petitioner enlisted in the U.S. Navy and began a period of active duty on 7 July 2005.

d. On 18 July 2007, he was convicted at general court-martial (GCM) for larceny and attempted larceny. He was sentence to reduction in rank, confinement and a Bad Conduct Discharge (BCD). After completion all levels of review, Petitioner was so discharged on 19 June 2008. He was issued a DD Form 214 that erroneously listed his date of birth as ██████████  
██████████

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[REDACTED], USN, [REDACTED]

e. Petitioner contends that given the better judgment and knowledge he currently possesses, his discharge could have been avoided in the legal sense. He contended that he made the erroneous assumption that he could order through military channel due to his service status when he placed his orders through Dell computers. He also contended that he faced harassment from both officers and enlisted and they threaten him with extended confinement at Leavenworth, so given the pressure he agreed to a pretrial agreement without fully comprehending his rights.

f. For purposes of clemency and equity consideration, the Board noted the Petitioner provided documentation describing post-service accomplishments and his correct date of birth.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's record warrants partial relief. Specifically, Petitioner's date of birth was not documented correctly on his DD Form 214 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in 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 the Wilkie Memo. These included, but were not limited to, Petitioner's 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 your misconduct, as evidenced by Petitioner's GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concluded that his discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects his conduct during his period of service, which was terminated by his separation with a BCD.

Furthermore, the Board was not persuaded by Petitioner's contention that he lacked understanding of his pre-trial agreement or guilty pleas. The Board noted that a plea of guilty is the strongest form of proof known to the law. Based upon Petitioner's plea of guilty alone and without receiving any evidence in the case, a court-martial could find Petitioner guilty of the offenses to which he pleaded guilty. The Board further noted that during a GCM guilty plea such as Petitioner's, the Military Judge (MJ) will only accept a guilty plea once they were satisfied that Petitioner fully understood the meaning and effect of his guilty plea, and only after determining that his plea was made voluntarily, of his own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had Petitioner state on the record that he discussed every aspect of his case including the evidence against him and possible defenses and motions in detail with his lawyer, and that Petitioner was satisfied with his counsel's advice. Further, the MJ would have also had Petitioner state on the record that he was pleading guilty because he felt in his own mind that he was guilty of the misconduct for which he was being charged. Moreover, the Uniform Code of Military Justice states that during the

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appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in Petitioner's case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in Petitioner's case. Based on these factors, the Board concluded that Petitioner was properly convicted based on his voluntary and informed guilty pleas, and appropriately awarded a BCD due to the severity of his 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 a BCD. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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 him a discharge upgrade 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.

RECOMMENDATION:

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

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 19 June 2008 correcting:

Box 5. Date of birth: [REDACTED]

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.

9/18/2024

[REDACTED]