



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

██████████  
Docket No. 7549-24

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,  
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)

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 naval record be corrected to upgrade his characterization of service to Honorable and to make other conforming changes to his DD Form 214.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 27 September 2024 and, pursuant to its regulations, determined by majority vote 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, the Board determined that it was in the interests of justice to review the application on its merits.

c. Petitioner enlisted in the U.S. Navy and began a period of active service on 9 August 1989. Petitioner's enlistment physical examination, on 15 February 1989, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 19 November 1989, Petitioner reported for duty on board the ██████████  
██████████. On 11 July 1990, Petitioner reported for duty on board

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[REDACTED]. On 30 August 1990, Petitioner reported for duty on board [REDACTED]. On 23 April 1991, Petitioner reported for duty on board the [REDACTED]  
[REDACTED]

e. On or about 2 July 1992, Petitioner was convicted at a General Court-Martial (GCM) of: (a) the wrongful use of a controlled substance (cocaine), and (b) two (2) separate specifications of the wrongful distribution of a controlled substance (cocaine). Petitioner's counsel described the circumstances leading up to Petitioner's arrest and conviction as follows:

...his arrest stems from his association with shipboard friends he made while cutting hair for extra income. Shortly after one of these friends was arrested for selling drug[s], he and several others in his department, including his supervisor, were also arrested. The Applicant states that prior to the incidents that led to his discharge, that he never experienced any disciplinary issues. The Applicant also states that prior to his arrest, all drug tests had been clean. However, following his arrest he tested positive for cocaine. The Applicant further states that a test performed 24 hours after his arrest was negative for any illicit substances. The Applicant also asserts that after his arrest that there were no drugs found in his house, on his person, or in his vehicle. The Applicant states that he never used any illicit drugs while in the military. The Applicant also states that he has never had any past or present arrests besides the arrest leading to his court-martial.

f. Petitioner was sentenced to confinement for one (1) year, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and to be separated from the Navy with a Dishonorable Discharge (DD). On 10 August 1992, Petitioner's command issued a "Page 13" informing him that he was not eligible for reenlistment due to the commission of a serious military offense. On 17 September 1992, the Convening Authority approved the GCM sentence as adjudged, except suspended any confinement in excess of six (6) months.

g. Following his release from confinement, Petitioner was placed on appellate leave to await his punitive discharge. Upon the completion of GCM appellate review in Petitioner's case, on 20 October 1993, he was separated from the Navy with a DD and was assigned an RE-4 reentry code.

h. On 10 August 2004, this Board denied Petitioner's initial discharge upgrade petition.

i. In short, Petitioner contended, in part: (1) it has been over 30 years since his discharge, and since that time he has worked hard to become an individual who serves the community by helping to mold young men and women into productive citizens, (2) those who know him best attest to his remarkable character and his dedication to serving others, and (3) the DD has served its punitive purpose, and it would be an injustice to allow it to remain on the Petitioner's record the rest of his life. The Petitioner denies any culpability and still maintains his innocence to this day as to all of his GCM offenses.

j. Based on his available service records, Petitioner's overall conduct trait average assigned on his periodic performance evaluations during his enlistment was approximately 3.6. Navy

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regulations in place at the time of his discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), to be eligible and considered for a fully Honorable characterization of service. Petitioner's service record indicated that he only received two (2) graded performance evaluations during his career, neither of which were dated in close proximity to, or after, his GCM conviction.

#### BOARD CONCLUSION

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's discharge upgrade request warrants partial relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Wilkie Memo. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

After thorough review and in light of the Wilkie Memo, the Board concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency, that a discharge upgrade to General (Under Honorable Conditions) (GEN) and no higher is appropriate at this time. Despite the gravity of Petitioner's serious drug-related misconduct, the Board based their decision to grant the discharge upgrade solely on the fact that Petitioner submitted advocacy letters attesting to his good character and post-service conduct as an exterminatory business owner.

Lastly, notwithstanding the relief recommended 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 GEN discharge characterization and no higher was appropriate. The Board also did not find a material error or injustice with the Petitioner's RE-4 reentry code. The Board concluded the Petitioner was originally assigned the correct reentry code based on the totality of his circumstances, and that such reentry code was proper and in compliance with Department of the Navy directives and policy at the time of his discharge.

#### BOARD RECOMMENDATION

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

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty, for the period ending 20 October 1993, indicating his character of service was "General (Under Honorable Conditions)," the separation authority was "MILPERSMAN 1910-164," the separation code was "JFF," and the narrative reason for separation was "Secretarial Authority."

That no further changes be made to Petitioner's record.

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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 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.

11/3/2024

