



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

██████████
Docket No. 7865-24

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 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. Enclosures (1) through (2) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 13 November 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 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 statute of limitation was waived in the interests of justice.

c. Petitioner enlisted in the U.S Navy and began a period of active duty on 15 January 1986. Upon entry onto active duty, Petitioner admitted to illegal use of a controlled substance while in the Delayed Entry Program but a waiver was not required. Petitioner subsequently completed this enlistment with an Honorable characterization of service on 1 February 1990 and immediately reenlisted.

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d. Unfortunately, documents pertinent to Petitioner's administrative separation are not in the 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. The Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 14 January 1994 with an Other Than Honorable (OTH) characterization of service, narrative reason for separation is "Misconduct – Drug Abuse," separation code is "HKK," and reenlistment code is "RE-4." Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214) does not annotate his previous period of continuous Honorable service from 15 January 1986 through 1 February 1990.

e. Petitioner contends that the discharge he received was improper because he served honorably during [REDACTED] without any incidents and requests an Honorable for both periods of service. Additionally, he argues that his discharge is inequitable since it is based on a single incident of misconduct late in his second enlistment. For purposes of clemency and equity consideration, the Board noted the Petitioner provided a letter from National Personnel Records Center and Department of Veterans Affairs, documents from his official military personnel file, but no documents describing post-service accomplishments or advocacy letters. Additionally, Petitioner checked the "PTSD" box on his application but did not respond to the Board's request for supporting evidence of his claim.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's record warrants partial relief. Specifically, as discussed above, the Board determined Petitioner's DD Form 214 fails to document Petitioner's continuous Honorable service from 15 January 1985 through 1 February 1990 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. In making this finding, the Board considered the seriousness of his 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. Further, there is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. Finally, the Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization.

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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 Petitioner provided 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 an 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 14 January 1994, indicating the following changes:

Block 18. "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 860115 UNTIL 900201."

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.

11/29/2024

