



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

■
Docket No. 7869-24
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
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Navy, filed enclosure (1) requesting upgrade of his characterization of service on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosures (1) through (3) apply.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 9 September 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 enlisted in the Navy and began a period of active service on 24 July 1979.

d. During Petitioner's first period of continuous honorable active service, he received non-judicial punishment (NJP) for wrongful use of a controlled substance. His second period of continuous honorable service began on 3 March 1983 and was served without incident. He reenlisted and began his third period of honorable active service on 6 October 1986. During this third enlistment, Petitioner received a civil conviction for driving under the influence (DUI) and NJP for twelve hours of unauthorized absence (UA).

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XXX-XX-██████

e. On 14 January 1992, Petitioner reenlisted and began his fourth and final period of service. On 21 September 1992, Petitioner pleaded nolo contendere to Battery (spouse) and Battery/Domestic Violence, and was sentenced to confinement, probation, and anger control evaluation. Petitioner completed Level III in-patient Alcohol Rehabilitation on 25 February 1993 and was issued an administrative remarks (Page 13) advising him that any further alcohol related incidents may result in disciplinary action and in processing for administrative discharge. On 17 March 1993, Petitioner was issued Page 13 counseling for his 1992 conviction for spousal abuse. He was advised that any further deficiencies in his performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 10 September 1993, Petitioner pleaded guilty to DUI in civilian court and was sentenced to one year of probation, a fine, DUI school, and revocation of his driver's license for six months. On 27 October 1993, Petitioner received NJP for UA from 10 September 1993 to 11 September 1993.

f. On 4 November 1993, Petitioner was notified of administrative separation processing by reason of misconduct due to commission of a serious offense and alcohol rehabilitation failure with a least favorable characterization of Under Other Than Honorable (OTH) conditions. He waived his rights to consult with counsel, submit a statement, or have his case heard by an administrative discharge board. Petitioner was offered, and elected, post-discharge alcohol dependency treatment through the Department of Veterans Affairs (VA). Petitioner's commanding officer recommended discharge with an OTH, the separation authority concurred on the basis of commission of a serious offense, and he was so discharged on 3 December 1993. Upon his discharge, he was issue a DD Form 214 that did not document his last period of continuous Honorable service from 6 October 1986 to 13 January 1992.

g. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied his request for an upgrade, on 4 March 1996, based on their determination that his discharge was proper as issued.

h. Petitioner contends that he received an OTH because of a "lapse in judgement," was a model Sailor for most of his Naval career, takes full responsibility for his issue with alcohol later in service and one relapse, and was going through an ugly divorce that influenced his relapse. For the purposes of clemency and equity consideration, Petitioner provided an advocacy letter from a Veteran Service Officer, a personal statement, and copies of documents from his service record book.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief. Specifically, as noted above, the Board determined Petitioner's DD Form 214 does not include a statement of continuous Honorable active service for his third enlistment from 6 October 1986 to 13 January 1992 and requires correction.

Notwithstanding the recommended corrective action below, the Board found no error or injustice in Petitioner's OTH characterization of service discharge for separation for misconduct due to commission of a serious offense. The Board carefully considered all potentially mitigating

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factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b).

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by his NJP and two civil convictions in his final enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely discrediting effect it had on the Navy. The Board also considered the likely negative impact Petitioner's repeated misconduct had on the good order and discipline of his command. The Board noted that Petitioner was given multiple opportunities to address his conduct issues, but he continued to commit misconduct, which ultimately led to his discharge for commission of a serious offense due to his conviction for spousal abuse.

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 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 him the relief he requested or granting relief as a matter of clemency or equity.

RECOMMENDATION

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) correcting Block 18, "Remarks" to indicate "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 861006 UNTIL 920113."

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 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.

9/30/2024

