



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

██████████
Docket No. 8135-24
Ref: Signature Date

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

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

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 or BCNR), requesting that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214, and to reinstate him into the naval service at paygrade/rank E-4.
2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 18 October 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. The Petitioner enlisted in the U.S. Navy and began a period of active duty service on 18 November 2019. Petitioner's enlistment physical examination, on 23 August 2019, noted no psychiatric or neurologic issues, symptoms, conditions, history, or counseling.
 - c. On 11 January 2023, Petitioner received non-judicial punishment (NJP) for two (2) separate specifications of failing to obey a lawful order or regulation. Petitioner appealed his NJP, and on 13 April 2023 higher authority set aside the findings. In granting relief, the General Courts-Martial Convening Authority (GCMCA) determined that such NJP constituted legal error and would constitute unjust punishment under the UCMJ.

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d. On 6 November 2023, Petitioner received NJP for two (2) separate specifications of dereliction in the performance of his duties. Petitioner did not appeal his NJP.

e. Consequently, Petitioner's command notified him that he was being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. Petitioner's command processed him for an administrative separation using "notification procedures," which meant that Petitioner was not entitled to request an administrative separation board to hear his case, but the least favorable discharge characterization he could receive was General (Under Honorable Conditions) (GEN). Petitioner waived his right to consult with counsel, but elected his rights to submit a written statement for consideration, and to GCMCA review of his proposed separation.

f. On 21 December 2023, the GCMCA reviewed Petitioner's proposed separation and directed Petitioner's discharge for misconduct with a GEN characterization of service and an RE-4 reentry code.

g. On 22 January 2024, Petitioner filed a formal request for redress with the GCMCA alleging certain wrongs with his NJP and pending administrative separation. On 6 February 2024, the GCMCA denied Petitioner's request for redress. In denying the redress request, the GCMCA determined that Petitioner's commanding officer did not do anything improper with respect to the processing of his NJP and administrative separation. Ultimately, on 9 February 2024, Petitioner was discharged from the Navy for misconduct¹ with a GEN characterization of service and was assigned an RE-4 reentry code.

h. In short, Petitioner contended that his current discharge was unjust because: (a) his performance was overly scrutinized, and his minor mistakes were exacerbated by his command in order to retaliate against him for filing a previous Congressional inquiry, and (b) there was not sufficient evidence to support that he was willfully derelict in the performance of his duties which were the charged offenses underlying his misconduct. Petitioner also contended that his discharge was inequitable because a fellow shipmate was written up for the exact same performance deficiencies, but such shipmate did not receive any disciplinary action or was processed for an administrative separation. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

CONCLUSION:

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

In light of the Wilkie Memo, the Board reviewed the entire record holistically and given the totality of the circumstances and purely as a matter of clemency, the Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as having been

¹ Petitioner's narrative reason for separation listed on his DD Form 214 was "Misconduct – Serious Offense."

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under GEN conditions, and that a discharge upgrade to “Honorable” is appropriate at this time. In granting his discharge upgrade, the Board cited that the misconduct underlying Petitioner’s discharge was relatively minor, and the Board believed that an administrative separation for his documented professional deficiencies was unduly harsh.

Based on the same rationale, the Board determined it was in the interests of justice to change Petitioner’s basis for separation to “Secretarial Authority.”

Notwithstanding the foregoing, the Board determined that Petitioner’s administrative separation was legally and factually sufficient and in accordance with all Department of the Navy directives and policy at the time of his discharge. The Board also determined that the command’s decision to administratively separate Petitioner was by no means arbitrary or capricious. As a result, the Board was not willing to administratively “reinstate” the Petitioner back on active duty and, instead, given his revised reentry code, the Board has placed the onus on the Petitioner to decide whether or not he wishes to reapply for enlistment in the U.S. Navy. The Board noted that Petitioner’s future eligibility and acceptance into the Navy was in no way to be construed as automatic and/or guaranteed by virtue of this decision, and the Board concluded Petitioner’s enlistment, should he choose to pursue it, would be determined by current Department of the Navy enlistment and eligibility criteria, and the needs of the Department of the Navy at such time.

In addition to denying Petitioner’s blanket reinstatement to active duty service, the Board also declined to grant Petitioner’s request to be promoted to Third Class Petty Officer (E-4). The Board reviewed Petitioner’s promotion history and noted that his highest rank/grade ever achieved on active duty was Hospitalman (E-3). The Board also noted that at no time during his active duty service was he ever reduced in rank from E-4 at an NJP hearing or other disciplinary proceeding, thus, the Board was not willing to summarily promote Petitioner to a rank/grade he never previously achieved.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

That Petitioner’s character of service be changed to “Honorable,” the narrative reason for separation should be changed to “Secretarial Authority,” the separation authority be changed to “MILPERSMAN 1910-164,” the separation code be changed to “JFF,” and the reentry code be changed to “RE-1J.”

That Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) for the period ending 9 February 2024.

That Petitioner shall be issued a new Honorable Discharge Certificate.

That a copy of this report of proceedings be filed in Petitioner’s naval record.

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

10/31/2024

