



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

██████████
Docket No. 8441-24

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, ██████████
USN, XXX-XX ██████████

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 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), requesting that his discharge characterization be changed on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosure (2) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 30 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 his naval service records, and applicable statutes, regulations, 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 duty on 20 January 1998. Upon his enlistment, Petitioner was granted a waiver for U.S. Army Delayed Entry Program discharge (DEP). On 16 January 2002, Petitioner was honorably discharged by reason of immediate reenlistment. On 17 January 2002, Petitioner began a second period of active duty.

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d. On 24 February 2006, Petitioner was charged with two instances of violation to a lawful order and three instances of wrongfully commit an indecent act with recruit. On 18 April 2006, Petitioner requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. On 8 May 2006, the separation authority approved the Petitioner's request and ordered an OTH discharge characterization in lieu of trial by court martial. On 23 May 2006, Petitioner was so discharged. Upon his discharge, he was issued a DD Form 214 that did not reflect his period of continuous Honorable service from 20 January 1998 to 16 January 2002.

e. Petitioner contends the punishment actions taken against him were extreme and not warranted. Petitioner claims he had two months on an eight year obligation remaining and never received any adverse action during his military career. Petitioner states he was an exemplified Sailor. Petitioner asserts he was unaware of the long term effects of the type of discharge in his personal life but continued to serve the community as a Firefighter. Petitioner feels he was given questionable advise by an individual who was assigned to him that was supposed to represent his best interest. Petitioner claims he was young and scare and took the advice to accept an OTH.

CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, as discussed previously, the Board determined Petitioner's DD Form 214 contains an administrative error and requires correction since it does not reflect his continuous Honorable service from 20 January 1998 to 16 January 2002.

Regarding Petitioner's request for a discharge upgrade, the Board determined no relief is merited. 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. For purposes of clemency and equity consideration, the Board noted the evidence Petitioner provided in support of his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his request to be discharged in lieu of trial by court-martial, 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. Additionally, the Board also noted that the misconduct that led to Petitioner's request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that Petitioner already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial; thereby sparing him the stigma of a court-martial conviction and possible punitive discharge. Ultimately, the Board was not persuaded by Petitioner's contention of injustice with his administrative separation and determined that his discharge remains appropriate.

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RECOMMENDATION:

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 23 May 2006, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 20JAN1998 TO 16JAN2002."

That 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.

10/28/2024

