



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

■
Docket No. 9000-24

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) Title 10 U.S.C. §1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149
(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 discharge be upgraded.

2. The Board, consisting of ■■■■■■■■■■, ■■■■■■■■■■, and ■■■■■■■■■■, reviewed Petitioner's allegations of error and injustice on 20 November 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, 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Navy and began a period of active duty on 28 July 1987. After honorably completing his initial period of service on 24 January 1995, he immediately reenlisted and commenced a second period of active duty. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that he submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, Petitioner would have conferred with a qualified military lawyer, been advised of his rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, Petitioner would have acknowledged that his characterization of service upon discharge would be an OTH.

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c. The documents pertinent to Petitioner's administrative separation are not in his 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. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Navy on 12 March 1999 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "In Lieu of Trial by Court-Martial," his separation code is "KFS," and his reenlistment code is "RE-4." In reviewing Petitioner's DD Form 214, the Board noted it does not annotate his previous period of continuous Honorable service.

c. Petitioner contends the charges brought against him were false and he wishes he had contested them at the time but had family matters which led him to yield to the charges against him. For purposes of clemency and equity consideration, Petitioner did not provide documentation describing post-service accomplishments or advocacy letters.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. Specifically, as discussed above, the Board noted Petitioner's DD Form 214 does not annotate his previous period of continuous active duty from 28 July 1987 to 24 January 1995 and requires correction.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service remains appropriate. 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, his desire for a discharge upgrade and the previously discussed contentions.

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 SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the likely seriousness of Petitioner's misconduct and determined he already received a large measure of clemency when the convening authority agreed to administratively separate him in lieu of trial by court-martial. Additionally, the Board was not persuaded by his contention that the charges brought against him were false and relied upon the presumption of regularity. The Board observed that Petitioner provided no evidence, other than his statement, to substantiate his contentions.

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

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XXX-XX-[REDACTED]

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

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 12 March 1999, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 28JUL1987 TO 12MAR1999."

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.

12/17/2024

