



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

■
Docket No. 9991-24

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, ■■■■■

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 18 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, 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, began a period of active service on 9 July 1990 and was honorably discharged on 11 May 1994. He reenlisted on 29 July 1999, and after a period of continuous Honorable service, Petitioner immediately reenlisted for a third period of service on 9 December 2002.

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[REDACTED], USN, [REDACTED]

d. On 2 August 2007, Petitioner received non-judicial punishment (NJP) for wrongful use of a controlled substance after testing positive for cocaine. Petitioner was subsequently notified of administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. He waived his right to consult with counsel, make a statement, or request an administrative discharge board. The Separation Authority directed an OTH characterization of service and, on 25 September 2007, Petitioner was so discharged. Upon his discharge, Petitioner was issued a DD Form 214 that did not annotate his period of continuous Honorable service from 29 July 1999 to 8 December 2002.

e. Post-discharge, Petitioner applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied Petitioner's request for an upgrade, on 21 November 2008, based on their determination that his discharge was proper as issued.

f. Petitioner contends his years of Honorable service should outweigh a one-time offense. For the purpose of clemency and equity consideration, Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 discussed above, the Board determined Petitioner's DD Form 214 does not annotate his period of continuous Honorable service from 29 July 1999 to 8 December 2002 and requires correction.

Notwithstanding the recommended corrective action below, the Board found no error or injustice in Petitioner's OTH characterization of service and discharge for misconduct due to drug abuse. The Board carefully considered all potentially mitigating 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 in his third enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the fact it involved 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. The Board noted that there is no precedent within this Board's review, for minimizing the "isolated incident." As with each case before the Board, the seriousness of a single act must be judged on its own merit and can neither be excused nor extenuated solely on its isolation. The Board determined 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. The Board further noted that despite Petitioner's prior record of service, certain serious offenses warrant separation from the Navy to maintain proper order and discipline. Wrongful use of controlled substances is one such offense requiring, at a minimum, mandatory processing for an administrative separation, which usually results in an unfavorable characterization of service.

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[REDACTED], USN, [REDACTED]

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 him the relief he requested or granting the requested 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), for the period ending 25 September 2007, correcting Block 18, "Remarks" to indicate "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 990729 UNTIL 021208."

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.

12/15/2024

