



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

Docket No. 0808-25

Ref:	Signature	Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USN,  
XXX-XX-[REDACTED]

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. Enclosures (1) through(3) apply.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 17 March 2025 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 after receiving a waiver for a pre-service civil theft offense and began a period of active service on 9 November 1998. He immediately reenlisted after a period of continuous Honorable service and commenced a second period of active duty on 4 October 2002.

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d. On 22 May 2003, Petitioner received non-judicial punishment (NJP) for drunk on duty. On 28 August 2004, Petitioner commenced a period of unauthorized absence (UA) that ended on 29 October 2004.

e. Based on the information contained on Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), it appears 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.

f. Unfortunately, the documents pertinent to Petitioner's administrative separation are not in his official military personnel file (OMPF). Notwithstanding, the Board relied on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, presumed that they properly discharged their official duties. Based on the information contained on Petitioner's DD Form 214, he was separated on 3 December 2004 with an "Under Other Than Honorable Conditions (OTH)" characterization of service, narrative reason for separation of "In lieu of trial by court-martial," reentry code of "RE-4," and separation code of "KFS;" which corresponds to conduct triable by court martial for which the member may voluntarily separate in lieu of going to trial. Petitioner's DD Form 214 does not annotate his period of continuous Honorable service from 9 November 1998 to 3 October 2002.

e. Petitioner contends he has not been in trouble in the twenty years since his discharge, would like the upgrade to assist with job searches and benefits, has a family, and, post-discharge, has maintained a constant work history. 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 previously discussed, Petitioner's period of continuous Honorable service is not annotated on his DD Form 214 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 Petitioner's potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that his misconduct, as evidenced by his NJP, period of UA, and SILT discharge, outweighed these mitigating factors. In

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making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given an opportunity to correct his conduct deficiencies but chose to continue to commit misconduct; which led to his OTH discharge. Petitioner's conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. 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 determined that he 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 Petitioner the stigma of a court-martial conviction and possible punitive discharge. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

Therefore, even in light of the Wilkie Memos 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.

#### 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 SERVICE FROM 981109 UNTIL 021003."

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.

4/7/2025

