

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

d. On 6 December 1995, Petitioner was convicted by special court-martial (SPCM) of failure to obey an order or regulation, cruelty and maltreatment, and three specifications of indecent assault¹.

e. Petitioner's record indicates that he was convicted by a second SPCM at which he was sentenced to a Bad Conduct Discharge (BCD). Unfortunately, documents pertinent to these proceedings 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. Following appellate review, Petitioner was discharged with a Bad Conduct characterization of service, reentry code of "RE-4," and separation code of "JJD/901;" which corresponds to BCD ordered by conviction by a special court martial. Upon his discharge, he was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that documented the separation authority's decisions but did not annotate his period of continuous Honorable service from 21 November 1986 to 18 July 1991.

f. Petitioner contends that while working in the [REDACTED], there was an investigation for individuals who were stealing computers and software. Although he had no involvement and his residence was searched during the investigation, the only thing that they found was an umbrella he had taken from the [REDACTED]. Petitioner claims the umbrella was broken and he had taken it to repair for personal use. However, the military judge linked him with another investigation and he was convicted as an example. He further contends that he understands that taking something from the government was wrong, regardless of whether it is going to be disposed, but that the judgement did not fit the crime.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's record warrants partial relief. Specifically, as discussed above, the Board determined Petitioner's DD Form 214 fails to document Petitioner's continuous Honorable service from 21 November 1986 to 18 July 1991 and requires correction.

Notwithstanding the below recommended corrective action, the Board concluded insufficient evidence exists to support Petitioner's request for an upgrade in characterization of service.

The Board initially concluded Petitioner was appropriately discharged with a BCD based on his second SPCM conviction. While the Board carefully considered Petitioner's contention that he was erroneously convicted and unfairly punished, the Board noted Petitioner provided no evidence, other than his statement, to substantiate his contentions. Without substantial evidence, the Board was unwilling to re-litigate facts from a SPCM conviction that occurred over 30 years ago and was subject to appellate review before Petitioner's punitive discharge was executed.

¹ The Board acknowledged a discrepancy exists between the Court Memorandum in Petitioner's record that indicates his conviction for three specifications of Indecent Language and the punitive letter of reprimand which documents the conviction was for three specifications of Indecent Assault.

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Therefore, the Board determined the presumption of regularity applies to the finding that Petitioner committed the misconduct that formed the basis of his second SPCM conviction and no error exists with his punitive discharge.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's contentions, the totality of his service, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, the harshness of Petitioner's punishment, Petitioner's claims of unfair treatment, and the passage of time since his discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board found that Petitioner's conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct, which led to his BCD. 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. Further, the Board believed that it would be unjust to characterize Petitioner's less than honorable service in the same manner as the service of the thousands of service members who, unlike Petitioner, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of Petitioner's discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice.

RECOMMENDATION:

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

Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 1 May 1997, to reflect the following comment added to the Block 18 Remarks section:

“CONTINUOUS HONORABLE ACTIVE SERVICE FROM 861121 UNTIL 910718.”

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

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

3/6/2026

