



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

[REDACTED]  
Docket No: 6477-21

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF 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 naval record be corrected to upgrade his characterization of service, make other conforming changes to his DD Form 214, and grant him constructive service credit.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 December 2021, 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 the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo).

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 interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the Marine Corps and began a period of active service on 26 January 2015. Petitioner's pre-enlistment physical on 21 February 2014 and

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corresponding self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

d. On 24 July 2017 Petitioner received non-judicial punishment (NJP) for violating a lawful general order prohibiting hazing. Petitioner engaged in hazing when he and five other USMC Corporals participated in a "blood striping" incident where the six Corporals delivered "dead legs" by physically driving their knees into the legs of three newly promoted Corporals. The "blood striping" incident occurred outside of a supervised training exercise. Petitioner did not appeal his NJP. On 28 July 2017 Petitioner's command issued him two "Page 11" counseling warnings - one to document his NJP, and the second where Petitioner acknowledged he was in a "promotion restriction status" for three months due to his NJP.

e. On 3 August 2017 Petitioner was notified he was being processed for an administrative discharge (Adsep) by reason of misconduct due to the commission of a serious offense. The factual basis of the proposed Adsep was Petitioner's violation of the USMC's lawful general regulation prohibiting hazing. Petitioner elected his rights to consult with counsel, submit a written rebuttal statement, and to present his case to an administrative separation board. In the interim, per Petitioner's counsel, the command changed Petitioner's Adsep notification to one utilizing "Board Procedures," which restricted his right to elect an Adsep board, but limited the least favorable discharge characterization to general (under honorable conditions) (GEN). On 25 August 2017, the Staff Judge Advocate for the 1st Marine Division determined that Petitioner's Adsep was legally and factually sufficient. Ultimately, on 8 September 2017 Petitioner was discharged from the Marine Corps for misconduct due to the commission of a serious offense with a GEN characterization of service and an RE-04 reentry code.

f. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 4.2 in conduct as assigned on his periodic evaluations. Marine Corps regulations in place at the time of his discharge required a minimum trait average of 4.0 in conduct/military behavior to be eligible and considered for a fully honorable characterization of service.

g. In short, Petitioner requested clemency in the form of a discharge upgrade, certain conforming changes on his DD Form 214, the setting aside of his discharge and restoration to active duty, and to receive constructive service credit for the time from his Adsep until the completion of his original enlistment. The Petitioner argued, among other contentions, that he was treated unfairly and his career was terminated prematurely and unnecessarily as a result of unlawful command influence (UCI) by the General Court-Martial Convening Authority in Petitioner's [REDACTED] chain of command, namely [REDACTED], USMC ([REDACTED]). The Petitioner contended [REDACTED] overstepped his authority and exerted UCI on multiple hazing cases processed at [REDACTED] at the same time as Petitioner's thus resulting in the overcharging and/or separation of many Marines. The Petitioner cited case law<sup>1</sup>

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<sup>1</sup> [REDACTED], [REDACTED] App. 2018) (hereinafter [REDACTED]). The [REDACTED] court concluded that the military trial judge did not abuse his discretion by finding [REDACTED] to be an accuser under Article 1(9) of the UCMJ and by dismissing the charges and specifications without

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in support of its argument holding that ██████████ was statutorily disqualified from convening a Special Court-Martial (SPCM) in the hazing case of a Marine at ██████████ following certain statements and actions taken by him after taking command of ██████████. The Petitioner also argued that the punishment did not match the alleged misconduct and led to an excessively severe result.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. Additionally, the Board reviewed his application under the guidance provided in reference (b).

In keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone hazing, the Board noted that the NJP was the only blemish on Petitioner's otherwise noteworthy record and determined that flawless service is not required for an honorable discharge. The Board also noted that Petitioner's overall active duty trait average in conduct during his enlistment exceeded the Marine Corps' required minimum trait average in that category for a fully honorable characterization of service. Accordingly, while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded after reviewing the record holistically and given the totality of the circumstances, that no useful purpose is served by continuing to characterize the Petitioner's service as having been under a GEN characterization, and that a discharge upgrade to "honorable" (HON) strictly on leniency and clemency grounds is appropriate at this time.

Notwithstanding the recommended corrective action below, the Board was not willing to: (a) grant constructive service credit for time the Petitioner did not serve on active duty, (b) return Petitioner to active duty and effectively set aside his Adsep, or (c) *sua sponte* remove any

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prejudice in a matter involving a Marine criminally charged with, *inter alia*, hazing at or about the time Petitioner's hazing case was being processed. The ██████████ court determined that certain actions ██████████ took and promulgated after assuming command of ██████████ on 22 June 2017 disqualified ██████████ from being an accuser in ██████████ case and constituted UCI. The ██████████ court concluded the military trial judge correctly applied the law when finding that a reasonable person would impute to ██████████ a disqualifying personal, rather than official, feeling or interest in the outcome of the case, thereby rendering ██████████ a type three accuser. The ██████████ court recognized that many of the actions and statements of ██████████ were "lawful-official in nature-expressions of his command authority." However, the Court determined that certain of ██████████ official actions and statements went substantially beyond this type of permissible engagement and leadership. Having considered the totality of the actions taken and statements made by ██████████ and considering their demeanor, tone, and context, the ██████████ court agreed with the military trial judge's conclusion that a reasonable person would impute to ██████████ a disqualifying personal, rather than official, feeling or interest in the outcome of the appellee's case. The Court noted, however, that by dismissing the charges against ██████████ *without prejudice*, the Marine Corps was not foreclosed from substituting a superior competent convening authority to convene a court-martial to try the accused. (*See also* Article 37 of the UCMJ – Unlawfully Influencing Action of Court).

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derogatory material from Petitioner's service record. The Board noted that the Court in the *Ortega* case ruled that although [REDACTED] was statutorily disqualified from convening [REDACTED] SPCM due to UCI, the Marine Corps was not foreclosed from using a superior competent authority to convene a court-martial to try [REDACTED] for his charged offenses. Applying similar rationale to the Petitioner's purely administrative case, the Board unequivocally determined that there was no genuine issue of material fact as to whether the Petitioner did indeed violate a lawful general order when he knowingly and willfully engaged in hazing other junior Marines. The Board concluded that Petitioner's charged misconduct at his NJP was substantiated by a preponderance of the evidence. The Board noted that while UCI may have impacted Petitioner's 2017 NJP and separation processing, the Board determined that any such injustices or errors were harmless. The Board concluded with a reasonable degree of certainty that a substitute Marine Corps convening authority would have reached the same guilty result at NJP, and that Petitioner would subsequently have been expeditiously administratively separated for his hazing offenses.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

That Petitioner's character of service be changed to "Honorable," the narrative reason for separation should be changed to "Secretarial Authority," the separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the reentry code be changed to "RE-1A."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

Petitioner shall be issued a new Honorable Discharge Certificate.

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 Regulations, 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.

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12/20/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]