



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

[REDACTED]
Docket No: 7601-21

Ref: Signature Date

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

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

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.

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 that his naval record be corrected by upgrading the characterization of service from "other than honorable" to "general under honorable conditions" on his Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 January 2022 and, pursuant to its regulations, determined 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 the subject former member's allegations of error and injustice, finds as follows:

a. Before applying to this Board, the Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not file in a timely manner, it is in the interest of justice to review the application on its merits.

c. The Petitioner enlisted in the Marine Corps and began a period of active duty on 23 September 1996.

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d. On 15 June 1998, Petitioner was not recommended for promotion as a result of a lack of leadership.

e. On 17 September 1998, Petitioner was counseled for failure to meet weight, height, and body fat standards. He was advised that failure to take corrective action could result in administrative separation.

f. On 15 November 1998, Petitioner was not recommended for promotion as a result of weight control failure.

g. On 21 July 1999, Petitioner was notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse, at which point he elected to waive all his procedural rights. On the same date, the Petitioner's commanding officer recommended his discharge from the Marine Corps with an other than honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse.

h. On 5 August 1999, the separation authority directed that Petitioner be administratively discharged from the Marine Corps by reason of misconduct due to drug abuse.

i. On 13 August 1999, Petitioner was discharged with an OTH.

j. On 7 September 2021, the Board for Corrections to Naval Records (Board) denied the Petitioner's request for a discharge upgrade. Upon receiving notification of the Board's decision, the Petitioner discovered a discrepancy with the Board's results and requested a reevaluation of his application.

k. Petitioner contends that he used a substance called "ultimate orange" with the goal of meeting the required height and weight standards. He later discovered that this substance contained amphetamines.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. The Board notes Petitioner's disciplinary infraction and does not condone his misconduct. However, the Board considered Petitioner's misconduct as an isolated incident and concluded that as a matter of clemency the record should reflect that he was discharged with a general (under honorable conditions) characterization of service vice receiving an OTH characterization. In making this finding, the Board was not persuaded by Petitioner's arguments of innocent ingestion and determined that his misconduct was sufficiently serious to disqualify him from receiving an Honorable characterization of service.

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

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RECOMMENDATION

That Petitioner's be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating his characterization of service as "general" (under honorable conditions).

That no further relief be granted.

A copy of this report of proceedings shall 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

2/11/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]