



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

[REDACTED]  
Docket No: 354-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] [REDACTED]  
USMC, [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 and to make other conforming changes to his DD Form 214.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 February 2022, 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 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 13 August 1997. Petitioner's pre-enlistment physical on 16 July 1997 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

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d. On 30 July 1998 Petitioner's command issued him a "Page 11" counseling sheet (Page 11) documenting his disobeying a lawful order by drinking underage and driving under the influence. The Page 11 expressly warned Petitioner that further deficiencies in performance and/or conduct may result in disciplinary action and processing for administrative discharge. Petitioner did not make a Page 11 rebuttal statement.

e. On 18 August 1998 Petitioner commenced a period of unauthorized absence (UA). Petitioner's UA terminated after 800 days on 26 October 2000 with his surrender to military authorities.

f. Following his return to military control, on 9 November 2000 Petitioner submitted a voluntary written request for an administrative discharge in lieu of trial by court-martial for his long-term UA. As a result of this course of action, Petitioner was spared the stigma of a court-martial conviction, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Petitioner expressly understood if his request was approved, the characterization of service would be other than honorable conditions (OTH). Petitioner acknowledged that with an OTH discharge he would be deprived of virtually all rights as a veteran under both federal and state legislation, and that he may encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of the discharge therein may have a bearing. Ultimately, on 13 September 2002 Petitioner was discharged from the Marine Corps with an OTH characterization of service in lieu of a trial by court-martial and assigned an RE-4 reentry code.

g. At the time of Petitioner's separation from the Marine Corps, his overall active duty trait average was 2.7 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.

h. In short, Petitioner argued that he had no choice but to go into a UA status in order to be there for his one-year old daughter undergoing surgery.

#### CONCLUSION:

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

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Wilkie Memo. These included, but were not limited to: (a) his daughter was having surgery and he went UA in order to be there for her, (b) he requested the time off but were denied, (c) his Staff NCI said family comes first and if you don't get the time off you should just leave and go be there for your baby, (d) Petitioner took his Staff NCO's advice and went UA, and (e) Petitioner's lost his GI Bill and all the other benefits

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he had worked for. However, based upon this review, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief.

The Board unequivocally did not believe that Petitioner's record was otherwise so meritorious to deserve a discharge upgrade or change in Petitioner's reentry code. The Board concluded that significant negative aspects of Petitioner's conduct and/or performance greatly outweighed any positive aspects of Petitioner's military record. The Board also determined that Petitioner's misconduct constituted a significant departure from the conduct expected of a Marine and that the record clearly reflected Petitioner's misconduct was intentional and willful and indicated he was unfit for further service. The Board determined the simple fact remained is that Petitioner left the Marine Corps while he was still contractually obligated to serve and he went into a UA status for 800 days without any legal justification or excuse. Moreover, the Board noted that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not otherwise be held accountable for his actions.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Petitioner's overall active duty trait average in conduct was 2.70. Marine Corps regulations in place at the time of Petitioner's discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that Petitioner's conduct marks during his active duty career were a direct result of his serious misconduct which further justified his OTH characterization of discharge and RE-4 reentry code.

The Board noted, contrary to his contentions, Petitioner's DD Form 214 specifically stated in Block 18, "Member did not contribute to MGIB." The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Moreover, absent a material error or injustice, the Board generally will not summarily upgrade a discharge or change a reentry code solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board concluded that Petitioner received the correct discharge characterization and reentry code based on his overall circumstances and that such characterization and reentry code were in accordance with all Department of the Navy directives and policy at the time of Petitioner's discharge. The Board carefully considered any matters submitted regarding Petitioner's post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief.

Notwithstanding the discharge upgrade denial, the Board did note, however, that certain administrative errors currently exist on Petitioner's DD Form 214 and are in need of correction.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error warranting the following corrective action.

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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 06 December 2000, to indicate the following changes:

Block 1: [REDACTED]  
Block 7.b: [REDACTED]

Following the corrections to the DD Form 214 for the period ending 06 December 2000 indicating the full name and home of record, that all other information currently listed on such DD Form 214 remain the same.

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.

2/24/2022

[REDACTED]

Executive Director

[REDACTED]