



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

██████████
Docket No: 1324-22
Ref: Signature Date

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

Subj: REVIEW NAVAL RECORD OF FORMER MEMBER ██████████,
XXX-XX-██████ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/enclosures
(2) NAVDRUGLAB ██████████ message ██████████ of Jan 99
(3) NJP of 1 Mar 99
(4) Unauthorized Absence Page 11 Entry of 14 Mar 99
(5) Report of Return of Absence (DD Form 616) of 29 Jun 99
(6) ADAPCP Memo of 26 May 99
(7) NJP of 25 Jun 99
(8) Notification of Separation Proceedings of 5 Jul 99
(9) Acknowledgement of Rights of 12 Jul 99
(10) CO Recommendation for Administrative Separation of 12 July 99
(11) SJA Review of 10 Aug 99
(12) Separation Authority of 11 Aug 99
(13) Certificate of Release or Discharge from Active Duty (DD Form 214)
(14) NDRB Decision of 24 Jan 08
(15) BCNR Decision of 4 Jun 19

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 to honorable.

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 16 March 2022. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of enclosures, 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:

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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 waive the statute limitation and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 9 September 1998. See enclosure (13)

d. Petitioner tested positive for marijuana on or about 30 December 1998 as indicated in NAVDRUGLAB [REDACTED] message [REDACTED] of Jan 99. As a result, Petitioner received nonjudicial punishment (NJP) for wrongful use of a controlled substance (marijuana) on 1 March 1999. See enclosures (2-3)

e. On 14 March 1999 Petitioner began a period of unauthorized absence (UA) and was declared a deserter on 15 April 1999—surrendered to military custody on 9 May 1999. See enclosures (4-5)

f. On 26 May 1999 a letter from the [REDACTED] Alcohol and Drug Abuse Prevention Control Program (ADAPCP) stated that Petitioner did meet the criteria for cannabis dependency diagnosis, however, Petitioner did not want to receive said treatment. See enclosure (6)

g. On 25 June 1999 Petitioner received his second NJP for breaking restriction and failure to obey a lawful order (under age alcohol consumption). See enclosure (7)

h. On 5 July 1999 Petitioner was notified of separation proceedings for misconduct due to drug abuse. Petitioner consulted with counsel and waived his right to an administrative discharge board. See enclosures (8-9)

i. On 12 July 1999 Petitioner's commanding officer recommended that Petitioner be separated with an under other than honorable (OTH) characterization of service. On 10 August 1999, the Staff Judge Advocate at Marine Corps Base [REDACTED] reviewed the administrative separation proceeding, and found them sufficient in law and fact, noting that Petitioner received a pre-service drug use waiver and that he had waived his rights for drug abuse treatment. On 11 August 1999, the separation authority directed that Petitioner be separated with an OTH characterization of service by reason of misconduct due to drug abuse, and on 20 August 1999 Petitioner was discharged. See enclosures (10 through 13)

j. Petitioner was previously denied an upgrade to his characterization of service by the Naval Discharge Review Board and this Board. Petitioner's previous request and contentions to this Board include—request an upgrade to general, after smoking marijuana since the age of 15, Petitioner was addicted to marijuana, and it greatly affected his judgment. The previous Board also considered Petitioner statement—as he aged, he has realized what an honor it was to be a Marine, and that he has been “marijuana free” since 2002, has not been in trouble with the law since his discharge, and this blemish on his record stops him from job advancement of earning real money. See enclosures (14-15)

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k. In Petitioner's current application, he contends his characterization of service should be upgraded to honorable, due to his post-service accomplishments. He cites superb employment with ██████████ State since 2007, work evaluations, clean criminal record, community service, and positive character. In addition, Petitioner states that he believes his discharge characterization was justified, however, significant time has passed and he was an 18 years old who made irresponsible mistakes. He has children who have grown, attends church regularly, good citizen with no further error in judgment, and this is stain on his family's history in the military. Furthermore, he provided a character letter and supporting documentation as to his post-service accomplishments. See enclosure (1)

MAJORITY CONCLUSION

The Board majority, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request warrants partial relief. In light of the Wilkie Memo, reference (b), the Board majority concluded after reviewing the record, and given the post-service accomplishments, and purely as a matter of clemency, that the Petitioner's discharge should be upgrade to General (Under Honorable Conditions) and no higher. In addition, recommended that his narrative reason for separation, separation code, and reentry code be changed. The Board was not willing to grant an honorable discharge and determined that significant negative aspects of the Petitioner's misconduct and performance outweighed his post-service accomplishments.

MAJORITY RECOMMENDATION

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

That Petitioner be issued a new DD Form 214 indicating a "General (Under Honorable Conditions)" characterization of service, "Secretarial Authority" narrative reason for separation, "MARCORSEPMAN 6214" separation authority, "JFF1" separation code, and a "RE-1A" reentry code.

That no further changes be made to the record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

MINORITY CONCLUSION

The Board minority, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors and determined that Petitioner's request did not warrant relief. The Board minority took into consideration the Wilkie Memo, reference (b), however, did not believe Petitioner's post-service accomplishments should mitigate Petitioner's repeated misconduct—two NJPs during his [s]hort period of active service (8 months and 24 days) of which he was UA and declared a deserter for almost 2 months and his wrongful use of a controlled substance. As such, the Board minority determined that Petitioner's OTH characterization of service is a proper depiction of Petitioner's military service.

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MINORITY RECOMMENDATION

In view of the above, the Board minority recommends no relief.

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. The foregoing action of the Board is submitted for your review and action.

3/24/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Petitioner's Request (Grant Relief – Honorable)

Reviewed and Approved Majority Recommendation (Partial Relief – General)

Reviewed and Approved Minority Recommendation (Deny Relief)

4/7/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]