



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

█  
Docket No: 2954-22  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █  
█ USMC

Ref: (a) 10 U.S.C. § 1552

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 his record be corrected to upgrade his characterization of service on his Armed Forces of the United States Report of Transfer or Discharge (DD Form 214).

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 13 May 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 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 interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 30 December 1955.

d. On 2 February 1957, Petitioner began a period of unauthorized absence (UA) which lasted two days, 17 hours, and 59 minutes.

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e. On 8 February 1957, Petitioner was convicted by summary court martial (SCM) for two periods of UA, and UA from appointed place of duty. He was sentenced to reduction to the rank of E-1.

f. On 26 March 1957, Petitioner was convicted by SCM for disobeying a lawful order by failing to stand on fire watch. He was sentenced to confinement at hard labor, and forfeiture of pay.

g. On 3 May 1957, Petitioner was convicted by special court martial (SPCM) for wrongful appropriation of funds belong to a fellow Marine, and intent to deceive by making a false statement. He was sentenced to a bad conduct discharge (BCD), confinement at hard labor, and forfeiture of pay.

h. On 7 May 1957, Petitioner waived his right to request restoration and requested to be discharged from the Marine Corps.

i. On 24 May 1957, the Petitioner's SPCM was reviewed and approved with a suspended BCD.

j. On 2 August 1957, the discharge authority ordered the Petitioner's SPCM sentence to be executed.

k. On 13 August 1957, Petitioner was discharged with an Other Than Honorable discharge characterization of service.

l. Petitioner Contends that he was participating in a game of chance when was told that by another Marine that one of the individuals was cheating. He met again with the same Marine while staying in the same tent during a deployment. He saw him making a lot of money while playing poker and decided to exclude himself from playing. On the same night, he saw the same Marine putting his game earnings under his pillow and stepping out of the tent. At that time, Petitioner decided to take the individual's money in return of him being cheated. The following morning he was interrogated by a CID officer and confessed that he took the money. He was later convicted by SPCM and charged with misappropriation of funds. Following his discharge, he began working with the arboriculture industry. He expanded his knowledge of trees and became a licensed arborist and eventually the owner of his own business. Petitioner has been married for over 50 years, raised two children, and have served his community by fulfilling different roles. Petitioner states that his success in the civilian sector was attributed to his service in the Marine Corps. For purposes of clemency consideration, the Board noted Petitioner provide supporting documentation describing post-service accomplishments and advocacy letters.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants relief. The Board notes Petitioner's disciplinary infractions and does not condone his misconduct. However, the Board considered Petitioner's positive post service

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conduct and concluded that as a matter of clemency his discharge should be upgraded with a General (Under Honorable Conditions) characterization of service. In making this finding, the Board considered the multiple advocacy letters provided by Petitioner.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. The Board determined that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board concluded by opining that certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record, even in the granting of clemency, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

Finally, the Board found no evidence Petitioner was not responsible for his misconduct and concluded no changes to his narrative reason for separation or reentry code were warranted. The Board concluded their recommended change to his character of service was sufficient to overcome any injustice in Petitioner's case.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating General (Under Honorable Conditions) as discharge characterization of service.

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

6/13/2022

[REDACTED]  
Executive Director  
[REDACTED]