



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

█
Docket No: 4510-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
XXX-XX-█ 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 (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 █, █, and █, reviewed Petitioner's allegations of error and injustice on 8 July 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 the Wilkie Memo (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 23 October 1990. As part of Petitioner's enlistment application, on or about 5 July 1990, he signed and acknowledged the "Statement of Understanding Marine Corps Policy Concerning the Illegal Use of Drugs."

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d. On 12 February 1993, Petitioner received non-judicial punishment (NJP) for making a false official statement and for the violation of a lawful order. Petitioner did not appeal his NJP.

e. On 1 November 1993, Petitioner's command issued him a "Page 11" counseling sheet (Page 11) documenting illegal drug involvement with amphetamine/methamphetamine. The Page 11 expressly warned Petitioner that a failure to take corrective action may result in administrative separation or limitation on further service. Petitioner did not submit a Page 11 rebuttal statement.

f. On 20 December 1993, Petitioner received NJP for the wrongful use of a controlled substance (amphetamine/methamphetamine). Petitioner appealed his NJP, but the appeal was denied by higher authority.

g. On 21 December 1993, Petitioner's command issued him a Page 11 documenting his failure to pay just debts and expressly advising him not to write checks when he didn't have sufficient funds to cover them. The Page 11 noted that this was his third letter documenting this particular deficiency. The Page 11 warned him that a failure to take corrective action may result in administrative separation or limitation on further service.

h. On 13 June 1994, pursuant to his guilty plea, Petitioner was convicted at a Special Court-Martial (SPCM) for the wrongful use of a controlled substance (marijuana). Petitioner was sentenced to confinement for sixty days, forfeitures of pay, and a discharge from the Navy with a Bad Conduct Discharge (BCD). The SPCM Results of Trial notification indicated the pretrial agreement (PTA) had no effect on the sentence in this case. On 2 June 1995, the Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence. Upon the completion of SPCM appellate review, on 20 November 1995, Petitioner was discharged from the Marine Corps with a BCD and assigned an RE-4 reenlistment code.

i. In short, Petitioner contended, in part, that at the time of his court-martial offenses the PTA he signed would change the BCD to an Other Than Honorable (OTH) conditions characterization of service. He also asserts errors to his DD Form 214 including an incorrect MOS designation and a missing sharpshooter badge annotation.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. 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) he wants the OTH discharge or higher he was told the PTA said he would receive, (b) the 0311 MOS is incorrect and it should be 0331, (c) his service record is missing the Pistol Sharpshooter Badge, (d) he dedicated his life to the Corps while serving honorably up until the very end, and (e) he made a mistake, was punished, and learned a valuable lesson and overcame what could have been an addiction. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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Based upon this review, the Board still concluded that given the totality of the circumstances Petitioner's request does not merit relief with the exception of making minor administrative changes to Petitioner's DD Form 214.

The Board unequivocally did not believe that Petitioner's record was otherwise so meritorious to deserve a discharge upgrade or change in Petitioner's reenry 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. 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.

Contrary to Petitioner's contention, the Board noted that the SPCM Results of Trial clearly indicated the PTA had no effect on Petitioner's BCD. Further, the Board 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans benefits and/or membership in certain veterans organizations, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in Petitioner's discharge, and the Board concluded that Petitioner's service discrediting, serious misconduct clearly merited his receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite Petitioner's contentions, this is not a case warranting any clemency. 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. Moreover, the Board determined that Petitioner does not warrant relief especially based on any post-service considerations given that the Petitioner is currently serving a fifty (50) year prison term in Indiana for child molesting, a conviction that was upheld in 2012 by the [REDACTED] Supreme Court.

Notwithstanding the discharge upgrade denial, the Board did conclude, however, that administrative changes to Petitioner's DD Form 214 should be made to reflect that his correct military occupational specialty (MOS), and a missing award that was clearly documented in his service record.

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 20 November 1995, to indicate the following changes:

Block 11: "0331 Machinegunner, 04 yrs, 03 mos" and that any reference to 0311 Rifleman be removed.

The entitlement to the following additional decorations, medals, badges, commendations, citations, and/or campaign ribbons in Block 13 of his DD Form 214

Pistol Sharpshooter Badge.

Following the corrections to the DD Form 214 for the period ending 20 November 1995, that all other information currently listed on such DD-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.

7/15/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]