



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

[REDACTED]
Docket No: 4703-22

Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. §1552
(b) SECDEF 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 w/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 by upgrading his discharge characterization from under Other Than Honorable (OTH) conditions.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 29 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, and reference (b), 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. The Petitioner enlisted in the Marine Corps and began a period of active service on 26 August 2002. He was counseled on 6 March 2003 regarding his diagnosis of Tenosynovitis, R/D Scaphoid Fracture left wrist; a physical condition not considered a disability which

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]

[REDACTED] USMC

interfered with performance of his duties. On 25 March 2003, Petitioner was counseled again regarding his lack of effort in rehabilitating his injury, his poor performance, and attitude toward his medical treatment.

c. Petitioner received nonjudicial punishment (NJP), on 1 April 2003, for failure to obey a lawful order – wear a wrist band for his injury. Petitioner received a second NJP, on 9 July 2003, for intentionally injuring himself to avoid service. On 18 July 2003, Petitioner was notified that he was being processed for administrative separation proceedings, at which point, Petitioner waived his right to an administrative board. On the same day, Petitioner submitted a written statement in which he admits to not keeping his splint on. Petitioner's commanding officer recommended Petitioner's separation with an OTH character of service by reason of pattern of misconduct. On 14 August 2003, Petitioner was discharged.

d. Petitioner contends, in part, that he had a difficult upbringing and takes responsibility for his actions. He explains his behavior was because he was in medical limbo for a lengthy period of time even though he states this was no excuse for his immaturity.

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (b), the Board determined that an injustice exists warranting relief. Specifically, the Board determined that a General (Under Honorable Conditions) characterization of service is appropriate given the minor misconduct for which the Petitioner was separated and in light of clemency factors set forth in reference (b). Even though the Board does not condone Petitioner's misconduct, they determined it was in the interests of justice to upgrade Petitioner's characterization of service purely as a matter of clemency.

Notwithstanding the recommended corrective action, 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 under the liberal consideration standards, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Similarly, the Board concluded Petitioner's narrative reason for separation, separation code, separation authority, and reentry code remain appropriate in light of his record of misconduct. In making this finding, the Board considered the brevity of Petitioner's active duty service and the misconduct in his record.

Accordingly, based on a careful review of all of the facts presented, the Board concludes that Petitioner is entitled to relief as follows.

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

RECOMMENDATION

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

That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215) indicating a General (Under Honorable Conditions) characterization of service.

That no further changes be made to Petitioner's record.

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.

8/16/2022

[REDACTED]

Exdcutive Director

[REDACTED]