



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

█  
Docket No: 4860-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █  
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Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 discharge be upgraded.
2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 5 August 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, 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 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.
  - c. Petitioner enlisted and began a period of active duty on 26 July 1978. He served his initial period of obligated active duty and was discharged for immediate reenlistment on 25 June 1981. Petitioner's official military personnel file (OMPF) does not contain a Certificate of Release or Discharge from Active Duty (DD Form 214) for this period of service. On 24 July 1981, following his reenlistment, he received a Certificate of Good Conduct, reflecting "Honorable" service during his first enlistment.

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d. Petitioner received a nonjudicial punishment (NJP) on 16 June 1982 for violations of: Article 128 for unlawfully striking a Private First Class/E-2 in the face with a closed fist; Article 86 for going from his appointed place of duty; and, Article 92 for being derelict in the performance of his duties by willfully failing to supervise his section. He was reduced from Corporal/E-4 to Lance Corporal/E-3 and served 30 days in Correctional Custody. He accepted a second NJP, on 17 August 1982, and received 7 days of restriction and forfeitures of pay for two specifications of Article 91 violations by willfully disobeying a lawful order to move away from the armory entrance and by disrespect through his choice of language in response to the order.

e. From 14 September 1983 through 25 January 1984, Petitioner absented himself without leave and, upon his return, was placed into pre-trial confinement. Through representative counsel, he requested discharge in lieu of trial by court-martial on 2 February 1984, which was approved by Commanding General, [REDACTED] Marine Division following a legal review. Consequently, he was discharged with an Other Than Honorable characterization, on 28 February 1984, with final proficiency and conduct marks of 4.4/4.0.

f. Petitioner contended that he made mistakes during his second tour and would like to correct it. He also indicated disability concerns pertaining to having had both of his legs and his left arm amputated and being on the verge of becoming homeless. For purposes of clemency consideration, the Board noted Petitioner did not provide supporting documentation describing post-service accomplishments or advocacy letters.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that the Petitioner's request warrants favorable action in the form of partial relief only. The Board reviewed his application under the guidance provided in references (b) intended to be covered by this policy. Following a thorough review of Petitioner's service records, the Board found that Petitioner served the duration of his first period of enlistment honorably and that his "Honorable" service during that period merits proper documentation in his OMPF. As a result, the Board determined an injustice exists with respect to correcting the missing DD Form 214 discharge record for the period of honorable service during his first enlistment.

Regarding Petitioner's second enlistment period, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his NJPs and discharge in lieu of court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the likely negative impact it had on the good order and discipline of his unit. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Accordingly, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading his characterization of service or granting clemency in the form of an upgraded characterization of service.

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

RECOMMENDATION:

That Petitioner be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty for the period of 26 July 1978 through 25 June 1981, reflecting his "Honorable" discharge was for the narrative reason "for Immediate Reenlistment" under the authority of "MARCORSEPMAN 6012.1h" with separation code "KHCI" and a reentry code of "RE-1A."

That Petitioner be issued an "Honorable" discharge certificate.

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

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.

8/19/2022

[REDACTED]  
Executive Director  
[REDACTED]