



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

██████████
Docket No: 6905-22

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 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 punitive discharge be upgraded to "General (Under Honorable Conditions)." Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 December 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. Petitioner enlisted in the Marine Corps and began a period of active duty on 5 August 2013, serving honorably during his first enlistment and reenlisting on 9 September 2016.

c. On 12 August 2019, Petitioner pled guilty, pursuant to the terms of a pre-trial agreement (PTA), to a single violation of Article 121 of the Uniform Code of Military Justice, due to larceny of unspecified military property of an unspecified value. He was sentenced to 14 months confinement, reduction from E-5 to E-1, and a Bad Conduct Discharge. In adjudging the sentence, the military judge referenced a companion case which was considered with respect to

sentencing parity and in which the accused received a substantially similar sentence except for a lengthier confinement period of 20 months.

d. The General Court Martial Convening Authority's (GCMCA) action suspended all confinement in excess of 10 months per the terms of the PTA. Notably, although Petitioner requested deferment and waiver of automatic forfeitures for the benefit of his dependent spouse, the GCMCA denied his request. Appellate defense counsel made no assignments of error, and Petitioner's findings and sentence were affirmed, on 25 June 2020, upon conclusion of appellate review. At the time Petitioner was discharged, on 2 October 2020, the period of continuous honorable service from his first enlistment was omitted from the block 18 remarks of his Certificate of Release or Discharge from Active Duty (DD Form 214).

e. Petitioner contends his punitive discharge was inequitable in consideration of his otherwise exemplary service and submitted evidence of numerous character statements which were made on his behalf prior to his discharge and which recommended his retention notwithstanding his single incident of misconduct. He states that he took responsibility for his actions and, in the year prior to his sentencing, used it as a teaching tool for other members of his unit to avoid his mistakes. He asserts that he continues to uphold Marine Corps values today, presenting two additional character letters from civilian employers, and that his punishment was disproportionate.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief with respect to his honorable period of service during his first enlistment. The Board reviewed the application under the guidance provided in reference (b). In this regard, the Board noted that the omission of Petitioner's honorable period of service from his DD Form 214 constitutes actual error and merits correction.

With respect to Petitioner's misconduct which resulted in his punitive discharge during his second period of enlistment, the Board favorably noted his otherwise exemplary service and numerous recommendations for his retention, to include from senior enlisted members and officers who expressed their willingness to continue serving with his based on his demonstrated character and rehabilitation potential throughout the disciplinary process. Likewise, the Board observed that Petitioner has submitted some evidence of positive post-discharge character. Unfortunately, however, the Board found that the lack of sufficient information regarding Petitioner's specific misconduct is problematic to a thorough assessment of its relative severity against the totality of his contended favorable matters. As a result, the Board considered the documented facts available within Petitioner's service record which indicate that his sentence, to include his punitive discharge, was assessed as a matter of parity with a companion case for which the Board lacked evidence that Petitioner's sentence was unduly harsh in proportion. Although the Board favorably noted that Petitioner submitted extensive evidence of mitigation and extenuation, the Board determined that it must assume the military judge considered this evidence with respect to his exercise of discretion in rendering the adjudged sentences. To this

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XXX XX [REDACTED] USMC

extent, the Board found that Petitioner's adjudged sentence of 6 months' less confinement than the companion case reflects that his favorable matters were already accounted for at the time his punitive discharge was adjudged. Additionally, the Board noted the GCMCA's denial of Petitioner's request for deferment and waiver of forfeitures for the benefit of his dependent spouse. In the absence of information regarding the specific value and item of government property in question, the Board viewed this unusual action on the part of the GCMCA as a persuasive indication of the likely severity of Petitioner's larceny. As a result, the Board found that the totality of favorable matters in support of clemency insufficient to outweigh the misconduct which resulted in Petitioner's punitive discharge. Accordingly, the Board determined that, although it is in the interest of justice to grant only partial relief with respect to the error in omitting his period of honorable service from his record of discharge, Petitioner's request does not merit further relief at this time.

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

RECOMMENDATION:

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 2 October 2020, documenting his "Period of continuous honorable service from 5 August 2013 to 8 September 2016" in his block 18 Remarks.

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.

1/5/2023

