



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

[REDACTED]
Docket No. 7951-22
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],
XXX XX [REDACTED] 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 "Honorable." Enclosure (1) applies.

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 3 February 2023, 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 the references.

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. 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. Petitioner enlisted in the Marine Corps with a waiver for pre-service drug use and began active duty on [REDACTED] April 1986. He was counseled on [REDACTED] February 1987 for failing to maintain sufficient funds for issued checks.

c. Petitioner's service health records show that he was admitted to the emergency room on 18 March 1988 for multiple stab wounds to his face, abdomen, chest, leg, and forearm. The medical account of this incident indicates he was assaulted by two males while at the self-service car wash and that they fled after stealing [REDACTED] from him.

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

[REDACTED] USMC

d. Petitioner was counseled on 13 June 1988 for poor job performance and lack of initiative. He subsequently accepted nonjudicial punishment, on 9 December 1988, for two specifications of violation of Article 86 of the Uniform Code of Military Justice due to failure to go to his appointed place of duty at the prescribed time. He was awarded 14 days of restriction and extra duty with forfeitures of pay.

e. Petitioner was again counseled, on 12 January 1989, that he was being administratively reduced due to professional inability. The next day, his platoon commander submitted a letter referring him for discharge, stating that his present service was of no value, that his future service was not promising, and that the Marine Corps could not risk retaining him.

f. On 22 February 1989, Petitioner was counselled for involvement with illegal drugs and, subsequently, recommended for Level II rehabilitation treatment. He accepted a second NJP for his violation of Article 112a due to wrongful use of a controlled substance (cocaine), for which he was reduced to E-1 and placed on restriction for 60 days. After the conclusion of his period of restriction, he had a third NJP for another violation of Article 86 due to absence from his appointed place of duty, for which he was awarded additional forfeitures of pay.

g. On 14 April 1989, Petitioner was notified of separation proceedings for misconduct due to drug abuse and due to a pattern of misconduct; he requested a hearing before an administrative board with representation by legal counsel. The report of proceedings showed that the members unanimously found that the evidence supported the basis and recommended Petitioner's separation under Other Than Honorable (OTH) conditions for the specific basis of drug abuse. The recommendation was approved following legal review and, on 18 August 1989, Petitioner was discharged with an OTH.

h. Petitioner contends through counsel that he is proud of his service as a Marine but regretful and ashamed of the conditions of his discharge. He submits evidence of his post-discharge character in support of his assertion that he has worked hard to better himself over the past two decades through education, employment, and service to his community. He hopes that the positive changes he has made and his perseverance in overcoming service-incurred injuries, addiction, and homelessness, along with his contributions to his community, warrant consideration of a discharge upgrade under a grant based on clemency. He believes relief should be granted on that basis because the totality of factors outlined in the Wilkie memo weigh in favor of relief. He adds, through counsel, that his administrative discharge proceedings did not address his stabbing or how that might have played a role in his behavioral issues which followed.

i. Post-discharge, Petitioner admits that he served a period of probation around 2007 after he wrote checks from a friend's account, that he floated around the country looking for work and places to live, and that he hit "rock bottom" after his father's death, but ultimately found help and rehabilitation through Narcotics Anonymous. After achieving and maintaining sobriety, he found temporary housing as a "shelter trustee" at [REDACTED], where he initially volunteered to assist with maintenance and cleaning in return for being allowed to remain there while pursuing higher education. After completing his bachelor's degree in 2013, the shelter then hired him as part of their staff, where he additionally assisted with overdose response and

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

first aid, to include administering Narcan and cardiopulmonary resuscitation, for which he pursued training in order to be able to further assist the homeless individuals at the shelter. He also completed a program with the [REDACTED] learning to build relationships based on healthy practices and has remained affiliated with the group, to include recently participating in public health and health policy research studies. As of 2022, he is pursuing certifications to become a truck driver.

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. The Board reviewed the application under the guidance provided in reference (b).

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board favorably considered the totality of his evidence of post-discharge rehabilitation and character, specifically observing that the initial downturn in his performance and conduct occurred after he suffered multiple stab wounds during a violent assault, even though he did not expressly contend that this undeniably traumatic and life-threatening experience impacted his behavior. Likewise, the Board noted that Petitioner initially struggled following his discharge, admitting to a period of probation and ultimately reaching his lowest point before he sought rehabilitation through Narcotics Anonymous to achieve and maintain sobriety, successfully pursued higher education in spite of his homelessness, and worked to better not only himself through healthier lifestyle and relationships but has also given back to his community in service to other homeless individuals and other men facing similar struggles. Given the external evidence substantiating the hurdles that Petitioner dedicated himself to overcoming in order to become not only a contributing member of society but also one who works to improve it, the Board found it admirable that he overcame the circumstances of his discharge and post-discharge past. Upon consideration of all evidence during his enlistment and post-discharge, the Board concluded that totality of favorable factors in support of clemency outweighed the misconduct which resulted in Petitioner's OTH discharge and are sufficiently redeeming that a discharge under honorable conditions is equitable and fair. Based on the same factors, the Board also concluded it was in the interest of justice to grant Petitioner a Secretarial Authority discharge.

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 Sailor'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, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate. The Board also determined his reentry code remains appropriate in light of his unsuitability for further military service. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed through the recommended corrective action.

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

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 Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that on 18 August 1989, his "General (Under Honorable Conditions)" discharge was issued under the authority of "MARCORSEPMAN par 6214" for the narrative reason of "Determination of Service Secretary - Secretary of the Navy Plenary Authority" with a separation code of "JFF1."

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.

2/24/2023

[REDACTED]

Executive Director

[REDACTED]