



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

█
Docket No. 9473-22

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) 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 Bad Conduct Discharge (BCD) to General (Under Honorable Conditions).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 23 January 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, 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.

b. Although the enclosure was not filed in a timely manner, it is in the interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 13 October 1993. On 3 April 1994, Petitioner began a period of unauthorized absence (UA) which lasted

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three-days and resulted on nonjudicial punishment (NJP) on 11 April 1994. On 27 July 1996, Petitioner was admitted at the [REDACTED] after suffering from multiple gunshot wounds. Petitioner was resuscitated by emergency room personnel, underwent surgery, and was later declared stable. On 25 October 1996, Petitioner was convicted by special court martial (SPCM) for four instances of larceny by stealing a bank ATM card and retrieving funds belong to a fellow Marine. Petitioner was sentenced to a Bad Conduct Discharge (BCD) characterization, reduction to the rank of E-1, confinement, and forfeiture of pay. On 30 April 1998, the Navy-Marine Corps Court of Appeals determined that the Petitioner's SPCM sentence was sufficient in law and fact. On the same date, Petitioner was discharged.

d. Petitioner joined the Marine Corps at age 17 and served as a squad leader for the majority of his MCT training. Petitioner claims he committed a foolish crime which caused him to be discharged with a BCD characterization. He describes how his life was turned around on July 1996 as he was shot seven times and almost died. Petitioner claims he still has a bullet in his spinal cord and lost a kidney as a result of these incident. He has been living with the memories of his mistakes for the past 20 years and apologize for dishonoring the Marine Corps. Following his discharge from service, Petitioner decided to get married and became foster parents to over 20 children. He ultimately adopted three children and has two biological children with his wife. On June 2009, his spouse passed away from liver failure and he was left with the responsibility of taking care of all five children. Petitioner was able to put himself together and started a company which it is name after his deceased spouse. Petitioner became a truck driver for the past 19 years, remarried, and has a clean criminal record.

CONCLUSION

Upon review and consideration of all the evidence of record, and in view of reference (b), the Board determined that there exists an injustice warranting relief. Specifically, the Board found, Petitioner's actions warranted a BCD characterization at the time of his separation given the level of misconduct for which he committed. The Board noted Petitioner's positive post-service conduct which included his involvement with fostering over 20 children and adopting three children. The Board determined Petitioner's positive post-service achievements merit clemency in his case. In light of clemency factors set forth in reference (b), the Board voted unanimously to upgrade the Petitioner's discharge characterization to General (Under Honorable Conditions).

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 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, and that a General (Under Honorable Conditions) discharge characterization and no higher was appropriate.

RECOMMENDATION

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

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That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty DD Form 214 (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.

2/12/2023

[REDACTED]