



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

[REDACTED]  
Docket No. 388-23

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] [CURRENTLY [REDACTED]]

Ref: (a) 10 U.S.C. § 1552  
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)  
(c) MCO 1900.16 w/CH-2 (MARCORSEPMAN)

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 and that his last name be changed in his record. Enclosure (1) apply.
2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 28 April 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.
  - 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 in the Marine Corps, began a period of active duty on 29 January 2007. He served without incident through 30 January 2010, at which time he was awarded a Good Conduct Medal.

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d. On 31 March 2010, Petitioner received nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 91 after willfully disobeying an order from a master sergeant to contact his superiors or noncommissioned officers to ensure he would arrive home in a safe manner, and Article 92, by violating a base order which prohibited driving while impaired, and Article 111 for operating a motor vehicle with a blood alcohol content of .17. Following his NJP, he was issued counseling in accordance with paragraph 6105 of reference (c).

e. Following an investigation by the Naval Criminal Investigative Service (NCIS) into allegations of fraud and misconduct, charges under UCMJ were preferred against Petitioner on 18 November 2010.

f. On 26 January 2011, Petitioner's request for a pre-trial agreement (PTA) was approved, with the consideration of referring the charges to Special Court-Martial (SPCM), rather than referral to a General Court-Martial (GCM), thereby significantly limiting the maximum punishment.

g. While awaiting trial, Petitioner committed additional misconduct in violating the Marine Corps uniform order by wearing an earring and by wearing non-regulation side-burns and facial hair. He accepted NJP for two specifications of offenses under Article 92.

h. Petitioner was tried before SPCM on 14 March 2011 and, consistent with his PTA, pleaded guilty to the following charges and specifications of violations of Articles under the UCMJ:

- Article 81, for conspiracy to commit larceny of U.S. currency of a value greater than \$500, the property of [REDACTED]

- Article 121, specification 3, in that Petitioner stole approximately \$2200 from the [REDACTED] account of a Private First Class (PFC)

- Article 121, specification 4, in that Petitioner stole approximately \$3400 from [REDACTED] account of another PFC

- Article 121, specification 5, in that Petitioner stole approximately \$975 from [REDACTED] account of a Private

- Article 134, specification 2, for knowingly transferring or using, without lawful authority, a means of identification of another person to access and steal money from the [REDACTED] account of a PFC, such conduct being prejudicial to good order and discipline or likely to bring discredit upon the armed forces.

i. Petitioner was found guilty of all charges to which he pleaded guilty and was sentenced to the jurisdictional maximum of the SPCM, with the exception of forfeitures of pay or fines. Therefore, his sentence included 12 months of confinement, reduction to E-1, and a Bad Conduct Discharge (BCD).

j. The findings and sentence of Petitioner's SPCM were affirmed on appellate review, and he was discharged, on 22 February 2012, with a BCD.

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k. Petitioner applied to the Naval Discharge Review Board (NDRB), contending that he did not commit the violations to which he pled guilty and asserting that his post-service conduct merited consideration for an upgrade on the basis of clemency. His request was denied on 15 November 2013. Petitioner then applied to this Board, which denied his application on 31 January 2017. In his application, he contended mitigating factors from his court-martial proceedings and evidence of post-discharge character merited consideration of an upgraded discharge on the basis of clemency.

l. On 16 August 2017, the Circuit Court for [REDACTED], ordered that Petitioner's surname be changed from [REDACTED] to [REDACTED].

m. Petitioner contends through counsel that his post-discharge character and behavior merit consideration of an upgrade based a totality of favorable clemency factors, to include that: he cooperated with NCIS during the investigation, he made full restitution even in excess of the dollar amount of his offenses, no one was physically injured and his crimes were not violent, his misconduct was an isolated incident, he accepted responsibility and pleaded guilty, his misconduct occurred over 14 years ago when he was very young, and his post-discharge behavior includes outstanding and service-oriented work as a highly respected senior federal employee as well as volunteering within his community. Petitioner also asserts that his PTA lacked consideration, which he states even the military judge noted on the record during trial, and that his rights were violated under Rule for Court-Martial 1105 because he was not given an opportunity to submit post-trial clemency matters. Further, Petitioner asserts that the NDRB misapplied its review of his clemency matters and, instead, erroneously focused on questioning how it was possible that Petitioner had, without misrepresentation of the circumstances of his discharge from military service, obtained Federal employment in spite of having a Federal criminal record for his conviction and a BCD.

n. In support of clemency and equity consideration, Petitioner submitted documentary evidence that included: character letters, LinkedIn professional endorsements, degrees, transcripts, and training certificates, a recent employee performance rating for his position with the [REDACTED] as [REDACTED], two merit awards from the National Institute of Allergy and Infectious Diseases for the period 2013-2014, two Director's Awards from the [REDACTED] during 2021 for his efforts as a Call Center Team member and on the COVID-19 Response team, and another [REDACTED] Director's Award from 2022 for his outstanding efforts as a member of the COVID-19 Vaccine Verification Team.

#### 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 request for a name change. In this regard, the Board noted that Petitioner provided clear evidence of a civilian court order with respect to his name change; therefore, the Board determined it was in the interest of justice to grant the requested relief in changing his surname on his discharge records.

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Regarding Petitioner's request for a discharge upgrade, the Board reviewed the application under the guidance provided in reference (b). Although the Board carefully considered all the evidence Petitioner submitted in mitigation, ultimately, the Board concluded the mitigation evidence he provided was insufficient to outweigh the seriousness of his misconduct. The Board concluded that, although Petitioner has submitted significant evidence of post-discharge accomplishments, the totality of favorable evidence Petitioner presented is insufficient to outweigh the severity and calculated nature of the misconduct, which resulted in his justifiably punitive discharge.

In making this finding, the Board did not concur with Petitioner's contention regarding the severity of his SPCM offenses. Notwithstanding Petitioner's restitution while awaiting trial, which the Board found undoubtedly benefited him in securing approval of his favorable PTA, the language of the specifications to which Petitioner pleaded guilty makes it clear that his actions – to which he admitted guilt – caused significant, immediate financial harm to multiple enlisted members who were junior to him. Whereas Petitioner asserts his misconduct was an "isolated" incident, the Board found it further aggravating that Petitioner's misconduct was not committed alone but in concert with the other service member with whom he admitted to having conspired, which reflects both a plan and intent in committing this financial harm to his fellow Marines. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting Petitioner a discharge characterization upgrade or mitigation evidence to grant him an upgrade as a matter of clemency or equity.

The Board fully considered his evidence of post-discharge rehabilitation and character de novo, without regard to any specific objections Petitioner asserts against the NDRB from its previous review of his contentions in 2013. Further, although Petitioner contends he did not receive adequate or proper consideration under the terms of his PTA, the Board noted that the scope and seriousness of his offenses would have readily warranted referral to a GCM forum. The Board found that it inured to Petitioner's significant benefit that he negotiated to receive referral to an SPCM forum with a significantly limited maximum punishment of not more than 12-months confinement, rather than the potentially 20 or more years maximum sentence which he could have faced at a General Court-Martial, as well as his protection from the punishment of a dishonorable discharge. Therefore, the Board did not find his arguments persuasive.

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

**RECOMMENDATION:**

Petitioner's naval record, specifically, Block 1 of all DD Forms 214, be corrected to reflect the name "[REDACTED]," instead of "[REDACTED]."

Petitioner be issued new DD Forms 214, which reflect the name "[REDACTED]"

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That a copy of this report of proceedings be filed in Petitioner's naval record, along with the previously issued DD Forms 214 which reflect the name "[REDACTED]," and the updated DD Forms 214 which reflect the name "[REDACTED]."

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.

5/9/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]