



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

[REDACTED]
Docket No. 589-23
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) USECDEF 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 (Wilkie Memo)

Encl: (1) DD Form 149 with 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 to change his reentry/reenlistment code on his DD Form 214.

2. The Board, consisting of [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, and 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 enclosure (1) was not filed in a timely manner, it is in the interests of justice to review the application on its merits.

c. The Petitioner originally enlisted in the Marine Corps and began a period of active service on 26 November 2012. Petitioner's pre-enlistment physical examination, on 27 July 2012, and self-reported medical history noted no neurologic or psychiatric conditions or symptoms.

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d. On 28 April 2016, Petitioner received non-judicial punishment (NJP) for drunken or reckless driving (DUI) in March 2016 near his home of record in [REDACTED]. Petitioner had been taken into custody by civilian authorities on 13 March 2016, at or about midnight, and charged with driving under the influence of alcohol. Petitioner did not appeal his NJP.

e. On 28 April 2016, Petitioner's command issued him a "Page 11" counseling warning (Page 11) documenting his NJP for DUI and noting his deficiencies and/or shortfalls in judgment, reliability, and self-discipline. The Page 11 informed Petitioner that his on-base driving privileges were restricted until further notice. The Page 11 expressly warned Petitioner that a failure to take corrective action and any further UCMJ violations may result in judicial or adverse administrative action, including but not limited to administrative separation. Petitioner did not elect to submit a Page 11 rebuttal statement. On the same day, Petitioner's command issued him a second Page 11 informing him that he was eligible but not recommended for promotion to Corporal (E-4) for twelve months due to his NJP. Petitioner did not elect to submit another Page 11 rebuttal statement.

f. On 11 April 2017, Petitioner's command issued him a Page 11 informing him that he was not recommended for reenlistment because of his DUI NJP in April 2016, and that he would be receiving an "RE-04" reentry/reenlistment code. Petitioner did not submit a Page 11 rebuttal statement. On 6 August 2017, Petitioner extended his enlistment for eight months into July 2018. Petitioner's stated reason for requesting his extension was to deploy with his unit in support of the [REDACTED] Marine Expeditionary Unit.

g. At the completion of his active obligated service, on 25 July 2018, Petitioner was discharged with an Honorable characterization of service. However, Petitioner received an RE-04 reentry code, thus making him ineligible for reenlistment. Petitioner's overall trait average in conduct as noted on his periodic performance evaluations was 4.4 out of 5.0.

h. Petitioner requested clemency in the form of an upgraded reentry code to "RE-1A." In short, Petitioner argued that other than his DUI he had been an exceptional Marine as evidenced by his overall military service record. Petitioner contended that, even after his NJP, he demonstrated that he could still be a successful Marine. Petitioner argued he ultimately was never convicted by civilian authorities of his DUI offense, and that his command made an error of discretion in issuing him an RE-4 reentry code based on his single indiscretion, especially in light of his overall exemplary performance.

CONCLUSION:

The Board carefully considered all potentially mitigating factors and contentions to determine whether the interests of justice warranted relief in accordance with the Wilkie Memo and general clemency considerations.

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The Board initially noted that in accordance with Marine Corps policy and directives, Petitioner did not meet USMC reenlistment qualifications based on his DUI NJP on active duty. The Board determined the ultimate outcome of his DUI charge with the civilian authorities was of no consequence to the USMC and was not persuasive to the Board. Therefore, the Board concluded that Petitioner's command did not commit any discretionary errors whatsoever in originally issuing him an RE-04 reentry code, and the Board determined any proffered arguments to the contrary were without merit.

However, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's misconduct, the Board noted that Petitioner's proficiency/conduct marks were consistently well above 4.0 during his entire enlistment that lasted over five and one-half years. The Board also noted the Marine Corps' inconsistent decision to extend Petitioner's enlistment for eight months, after his misconduct, for purposes of an overseas deployment with a Marine Expeditionary Unit. Accordingly, while not necessarily excusing or endorsing the Petitioner's misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service with an RE-04 reentry code, and that a change to Petitioner's reentry code strictly on extraordinary clemency and equity grounds is appropriate at this time.

RECOMMENDATION:

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

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) for the period ending 25 July 2018, to indicate the following changes:

That Petitioner's reentry code be changed to "RE-1A."

Following the corrections to the DD Form 214 for the period ending 25 July 2018 indicating the revised reentry code, that all other information currently listed on such DD Form 214 remain the same.

That 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 Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

2/12/2023

[REDACTED]

Executive Director

[REDACTED]