



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

██████████
Docket No. 1267-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████████ USMC

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 discharge be upgraded and that his nearest relative be corrected to identify his wife, whom he married post-discharge. Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 14 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 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, the Board determined that it was in the interests of justice to review the application on its merits in accordance with reference (b).

c. Petitioner enlisted in the Marine Corps and began an initial period of active duty on 27 July 1981. He served without incident and reenlisted twice, with his final period of enlistment beginning 21 April 1989.

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

d. On 31 October 1991, Petitioner accepted nonjudicial punishment (NJP) for a single violation of Article 112a of the Uniform Code of Military Justice for wrongful use of the controlled substance cocaine. He was reduced in rank to corporal / E-4, placed on restriction for 30 days, and subject to forfeitures of pay.

e. Petitioner was notified of separation proceedings by reason of misconduct due to drug abuse, evidenced by his positive urinalysis for cocaine, and he requested a hearing before an administrative discharge board. His commanding officer recommended his discharge under Other Than Honorable (OTH) conditions upon consideration that Petitioner had over 10 years of service and had knowledge of Marine Corps policy regarding use of controlled substances. Petitioner's case was referred to an administrative discharge board with a hearing set to convened 6 February 1992.

f. Petitioner submitted a request for a conditional waiver of his right to his administrative board hearing upon receiving a discharge of General (Under Honorable Conditions), and his officer-in-charge favorably endorsed his request, opining that Petitioner's loss of a promising Marine Corps career was "severe enough punishment."

g. Legal review of Petitioner's request recommended denial on the basis that reference (c) specified that "characterization of service for drug-related offenses more favorable than under other than honorable conditions" could only be approved by the Commandant of the Marine Corps or an administrative discharge board. Accordingly, Petitioner's administrative board hearing proceeded on 6 February 1992, substantiated the basis of misconduct due to drug abuse, and recommended separation under OTH conditions.

h. Commanding General, [REDACTED], approved the recommendation of the administrative board, and Petitioner was discharged on 28 February 1992 under OTH conditions.

i. At the time Petitioner's Certificate of Discharge or Release from Active Duty (DD Form 214) was issued, his block 18, Remarks, omitted his period of continuous honorable service from 27 July 1981 through 20 April 1989.

j. Petitioner contends that his DD Form 214 contains an error in that it should be updated to reflect that his wife, whom he married in 1998, is his nearest living relative. He also submits evidence of a favorable character of service determination by the Department of Veterans Affairs (VA) as evidence that his misconduct should not be considered as serious enough to negate his otherwise honorable service throughout over 10 years of active duty service, after overcoming a difficult childhood while growing up in inner city [REDACTED]. He states that he has turned his life around to provide a positive influence in his community, to include working for the U.S. Postal Service for 14 years as well as helping his four adult children with his grandchildren's education and with family events.

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). Specifically, the Board found that the omission of his period of continuous honorable service from his first two periods of enlistment from his remarks in block 18 of his DD Form 214 occurred in error and merits correction. Accordingly, the Board determined that it is in the interest of justice to grant partial relief with respect to this error.

With regard to Petitioner's request to change his nearest living relative on his DD Form 214, the Board first noted that Petitioner did not marry his current spouse until after his discharge nor has he asserted that his nearest relative identified in his DD Form 214, at the time of his discharge, was erroneous. The Board therefore found no evidence of error in this respect. Likewise, Petitioner has not presented any evidence that the recording of the correct data at the time of his discharge, and notwithstanding that this information changed after his discharge, has resulted in any prejudice or injustice to him as a result of the correct information being entered at the time of his discharge and remaining so today. Accordingly, the Board found Petitioner's request for relief on this issue determined to be without merit and denied.

With respect to Petitioner's contentions that his post-discharge character merits consideration of an upgraded characterization of service, the Board observed that Petitioner provided evidence of his VA character of service determination, which accounted for his 10 years of honorable service prior to his misconduct. However, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy (DoN) and have no bearing on previous active duty service discharge characterizations.

Additionally, although the Board favorably considered Petitioner's personal statement with respect to his post-discharge character and accomplishments, the Board observed that he did not submit supporting character letters, evidence of employment, or other documentation to substantiate his post-discharge Federal service or his contribution to his community and the welfare of others. Conversely, the Board concurred with the opinion of Petitioner's former commanding officer in that, having served for over 10 years without incident, he fully understood the Marine Corps' policy regarding illegal use of controlled substances, which the Board found aggravating in spite of his single offense. As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH 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 the relief he requested or granting relief as a matter of clemency or equity.

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

RECOMMENDATION

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

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215) reflecting a comment in the block 18: "Period of continuous Honorable service from 27 July 1981 to 20 April 1989."

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

That no further changes be made to Petitioner's naval record.

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 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.

4/25/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]