



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

█
Docket No. 3207-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ 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 discharge be upgraded to "Honorable," that his narrative reason for separation be changed to reflect "Secretarial Authority," and that his reentry code be changed to "RE-1." Enclosure (1) applies.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 19 May 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 and began a period of active duty on 20 November 1989. Less than a year later, on 2 November 1990, he was found guilty before Summary Court-Martial (SCM) for violation of the Uniform Code of Military Justice (UCMJ) under Article 128 after assaulting a lance corporal by striking him in the face with a closed fist.

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c. On 3 May 1991, Petitioner accepted nonjudicial punishment (NJP) for two specifications of violation of Article 107 due to providing a false name to a security patrolman and also stating that he had left his identification card in his room. He was also administratively counseled regarding retention and the potential for administrative separation if he committed further misconduct.

d. Petitioner accepted a second NJP, on 21 August 1992, for a violation of Article 86 due to failure to go to his appointed place of duty at the prescribed time and was again administratively counseled regarding his continued misconduct.

e. Petitioner was administratively counseled on 1 October 1992 for directing racial comments at other service members.

f. Petitioner accepted a third NJP, on 17 May 1993, for two specifications of violation of Article 91 for willfully disobeying an order from a sergeant to wash an aircraft strut and for being disrespectful by using provoking speech and gestures in the process.

g. Petitioner was subsequently notified, on 28 May 1993, of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and elected to waive all applicable rights. The recommendation for his discharge under Other Than Honorable (OTH) conditions noted that he was immature and unable to conform to rules and regulations.

h. Commander, Marine Corps Recruit Depot, [REDACTED], approved Petitioner's separation under OTH conditions for a pattern of misconduct. He was discharged, on 19 July 1993, with final proficiency and conduct marks of 4.5 and 4.1, respectively.

i. Petitioner previously applied to the Naval Discharge Review Board in 1996, contending that his service record was otherwise commendable but for his misconduct. He submitted clemency matters for consideration and expressed his desire to use his education benefits for self-improvement. The NDRB denied his application after determining his discharge was proper as issued.

j. Petitioner contends through counsel that his post-discharge behavior and character demonstrates his rehabilitation and merits consideration of an upgraded discharge on the basis of clemency factors. He submits that he has gained significant experience in the field of avionics and has continued to support the military's mission for over 16 years since his discharge working as a civilian contractor. In addition to evidence of his personal and professional growth, in the form of four character letters from his various supervisors, his resume, and five safety excellence awards, Petitioner also submits that his misconduct occurred almost 30 years ago during his youth and that his character of discharge serves as an injustice in contrast to the positive changes he has made in the years since his discharge.

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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) with respect to Petitioner's contentions of clemency.

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board favorably considered his evidence of post-discharge rehabilitation and character, specifically observing that Petitioner's performance of duties during his military service was notable but for his continued minor infractions. The Board also considered that, although Petitioner is not serving as a Federal civilian employee, his continued work on military aircraft not only furthers the military mission but also necessitates that his conduct continues to conform to expectations within that sensitive field. In light of those considerations, and the additional factors of his youth and immaturity at the time of his discharge, the Board concluded that the totality of favorable matters in support of clemency outweighed the misconduct which resulted in Petitioner's administrative discharge. Accordingly, the Board determined that it is in the interest of justice to grant partial relief in the form of an upgraded characterization of service to General (Under Honorable Conditions), and a change to his reason for separation to Secretarial Authority with associated changes to his separation authority and separation code.

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 member'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. Additionally, the Board determined Petitioner's assigned reentry code remains appropriate in light of his unsuitability for military service. Ultimately, the Board found that any injustice in Petitioner's record is adequately addressed with the recommended corrective action.

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 19 July 1993, his character of service was "General (Under Honorable Conditions)" with a discharge 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.

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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.

5/30/2023