



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

■
Docket No. 6462-23

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ■■■■■ ■■■■■
■■■■■ USMC

Ref: (a) 10 U.S.C. §155
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) requesting his characterization of service be changed to Honorable and he be restored to the paygrade of E-3. Enclosures (1) and (2) apply.

2. The Board, consisting of ■■■■■, and ■■■■■, reviewed Petitioner's allegations of error and injustice on 11 September 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 interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active service on 25 September 2000.

d. On 13 December 2002, Petitioner received non-judicial punishment (NJP) for wrongfully using cocaine. On both 7 and 10 January 2003, Petitioner refused treatment for substance abuse through the military.

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e. On 14 January 2003, Petitioner was notified of administrative separation processing by reason of misconduct due to drug abuse. He waived his right to counsel and an administrative discharge board. Petitioner's commanding officer recommended an under Other Than Honorable conditions (OTH) discharge by reason of his misconduct. On 4 February 2003, the discharge authority directed discharge with an OTH characterization of service. On 12 February 2003, Petitioner was so discharged.

f. Petitioner contends his post-discharge record supports relief in his case. He also argues that, other than his misconduct, he performed well as a Marine. For purposes of clemency and equity consideration, the Board noted Petitioner provided documentation describing post-service accomplishments and advocacy letters.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief. The Board reviewed Petitioner's application under the guidance provided in reference (b).

The Board found no error in Petitioner's OTH characterization of service discharge for separation for misconduct due to drug abuse. The Board noted Petitioner's disciplinary infraction, as well as the fact that it included a drug offense, and does not condone his misconduct, which resulted in his OTH characterization of service. However, the Board considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). After reviewing the record holistically, given the totality of the circumstances, and purely as a matter of clemency, the Board concluded Petitioner's discharge characterization should be changed to "General (Under Honorable Conditions)." In making this determination, the Board considered the evidence Petitioner submitted, including five advocacy letters, that documented his post-discharge good character, successful employment, and educational accomplishments.

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. Further, the Board determined Petitioner's narrative reason for separation, separation code, and reentry code remain appropriate based on his drug abuse. Finally, the Board found no basis to grant Petitioner's request to be reinstated to the paygrade of E-3. The Board noted Petitioner was appropriately reduced in rate at NJP for his drug abuse. Ultimately, the Board concluded that any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

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

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RECOMMENDATION

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting that, for the period ending 12 February 2003, Petitioner's characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to Petitioner's 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.

9/26/2023

