



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

██████████
Docket No. 7740-23

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)

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

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting an upgrade to his character of service. Enclosure (2) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 17 November 2023, and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of his naval service records, and applicable statutes, regulations, 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 Reserves and completed an initial period of active service for training from 20 May 1985 to 10 August 1985. Upon his discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) which erroneously annotates his character of service as entry level service (ELS) vice Honorable.

d. Petitioner was transferred to his Reserve unit on 11 August 1985. On 30 December 1987, Petitioner was declared an unsatisfactory participant in USMCR. Between 1987 and early 1990,

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

Petitioner failed to attend scheduled inactive duty training (IDT) on numerous occasions. During the aforementioned period, Petitioner was notified of his failure to attend scheduled IDT. On 15 March 1990, administrative separation proceedings were initiated and forwarded via certified mail to the Petitioner. Petitioner's commanding officer recommended Petitioner's separation, noted Petitioner failed to attend a total of 48 drills, and failed to regain satisfactory drill status. Petitioner continued to miss IDT through May 1990. In May 1990, the staff judge advocate determined Petitioner's separation proceedings to be sufficient in law and fact. Subsequently, the separation authority approved and directed Petitioner's discharge. On 21 May 1990, Petitioner was discharged with an Other Than Honorable (OTH) character of service by reason of failure to participate.

e. Petitioner contends he was guaranteed tuition assistance, and has been denied for 35 years. For purposes of clemency and equity consideration, the Board noted Petitioner did not provide documentation describing post-service accomplishments or advocacy letters.

CONCLUSION:

Upon review and consideration of the evidence of record and reference (b), the Board determined Petitioner's record warrants partial relief. As noted previously, Petitioner's DD Form 214, for the period ending on 10 August 1985, erroneously indicates a character of service of ELS vice Honorable, and requires correction.

Regarding Petitioner's request to upgrade his OTH, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with reference (b). These included, but were not limited to, Petitioner's desire for a discharge upgrade and his previously discussed contentions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that Petitioner's misconduct, as evidenced by his extended period of failure to participate in required IDT, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his misconduct and the fact Petitioner disregarded his contractual responsibility to attend IDT. Additionally, the Board considered the likely negative effect Petitioner's conduct had on the good order and discipline of his unit. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 the requested relief as a matter of clemency or equity.

RECOMMENDATION:

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

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

That Petitioner be issued a new DD Form 214, for the period ending on 10 August 1985, which indicates a character of service Honorable.

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.

12/5/2023

[REDACTED]