



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

█
Docket No. 9319-23
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), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his discharge be upgraded.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 13 November 2023, and, pursuant to its regulations, determined that 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, and policies, including 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. Although Petitioner did not file his application 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. During Petitioner's enlistment processing he disclosed breaking and entry and larceny charges as well as marijuana use and was granted an enlistment waiver. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty on 14 July 1987. On 15 May 1989, he commenced a period of unauthorized absence (UA) which totaled 95 days and ended in his surrender. On 11 October 1989, Petitioner submitted a request for separation in lieu of trial by court-martial under Other Than Honorable (OTH) conditions. Subsequently, his request was approved and he was discharged, on 3 November 1989, with an OTH characterization of service by reason of Separation in Lieu of Court-Martial.

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c. Petitioner contends: (1) he would like a discharge upgrade in order to serve in the [REDACTED] Honor Guard, (2) he had family issues as a result of his mother's declining health and he was the only one that could take care of her, (3) he had issues with his brother and had to keep going home to help his mother, (4) he received an unauthorized absence charge for going home to take care of his mother, (5) he was a good Marine, and (6) since his discharge he has an immaculate record and has never been in trouble.

d. For purposes of clemency and equity consideration, Petitioner provided a Department of Veterans Affairs statement in support of claims, character letters, P&IP SAP Project Awards of Excellence Certificate, State of [REDACTED] Emergency Medical Technician Certificate, Youth Opportunity Grant Prospective Mentor Training Certificate of Completion (2001), and a copy of his Certificate of Release or Discharge from Active Duty (DD Form 214).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, with regard to Petitioner's request that his discharge be upgraded, the Board noted Petitioner's misconduct and does not condone his actions. However, in light of reference (b), after reviewing the record liberally and holistically, given the totality of the circumstances, based on Petitioner's post-discharge accomplishments, and as a matter of clemency, the Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions). In making this finding, the Board noted Petitioner's post-discharge accomplishment as evidenced by his supporting evidence.

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 concluded Petitioner's basis for separation and assigned reentry code remains appropriate in light of his record of misconduct. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

Petitioner be issued a new DD Form 214, for the period ending 3 November 1989, indicating his character of service as "General (Under Honorable Conditions)."

No further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in Petitioner's naval record.

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

12/1/2023

[REDACTED]

Executive Director
Signed by: [REDACTED]