



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

██████████  
Docket No. 10847-23  
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. §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, a former member of the Marine Corps, filed enclosure (1) requesting his discharge be upgrade to Honorable (HON), or in the alternative General (GEN), and that the related administrative data on his DD Form 214 be corrected. Enclosures (1) and (2) apply.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 19 January 2024, 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 21 January 1972. On 18 May 1973, he received non-judicial punishment (NJP) for two occasions of unauthorized absence (UA). On 12 June 1973, after observing rapid deterioration of Petitioner's performance and bearing, and fearing he was slipping into a state of depression, the Director of the Marksmanship Branch at Marine Corps ██████████, requested he undergo a psychiatric evaluation. The following day, on 13 June 1973, Petitioner's Commanding Officer (CO) requested a psychiatric evaluation of Petitioner, stating that Petitioner's overall behavior

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was detached and disjointed, and unless (his) mental condition improved he would be of no value as a Marine. On 22 June 1973, Petitioner was examined at the Naval Hospital, revealing evidence of “acute situational anxiety manifested mainly by depression and immature personality – mild, manifested by poor judgment, low tolerance for stress, and emotional lability.” The doctor stated Petitioner had the desire to continue to serve honorably and determined Petitioner’s issues related to marriage problems. He recommended marital counseling.

e. On 30 November 1973, Petitioner was found guilty at Special Court-Martial of violating Article 80 of the Uniform Code of Military Justice (UCMJ) by the attempted sale of two packets of THC. He was sentenced to confinement at hard labor for three months, forfeiture of \$217.00 per month for three months, reduction to the rank of E-1, and a Bad Conduct Discharge (BCD). On 21 March 1974, the Convening Authority (CA) approved the sentence, but on 5 April 1974, the action was withdrawn due to prejudicial error requiring reassessment of the sentence. The reassessed sentence suspended the BCD but, on 29 April 1974, the Separation Authority disapproved the findings of guilty and the sentence, and the charges were dismissed.

f. A month later, on 28 May 1974, Petitioner was subjected to a Fitness for Duty Examination wherein he admitted to use of heroin, cocaine, and hallucinogens. Thereafter, on 1 July 1974, he was notified of administrative separation processing by reason of unfitness due to use and possession of controlled substances. He consulted with counsel and elected to appear before an administrative discharge board (ADB). While awaiting the ADB, he received NJP a third time for breaking restriction and willfully disobeying the order of a superior non-commissioned officer. Additionally, on 6 August 1974, he was convicted by the Superior Court of [REDACTED], of possession of marijuana, for which he was sentenced to two years probation. His ADB was held on 25 September 1974, where he was recommended for an undesirable discharge. He was discharged with an OTH on 15 November 1974.

g. Post-discharge, Petitioner requested review of his discharge by the Naval Discharge Review Board (NDRB). On 20 July 1976, the NDRB found his discharge should not be changed, corrected, or modified.

h. Petitioner contends, pursuant to the Wilkie Memo, that his post-discharge conduct outweighs the misconduct which led to his discharge.

i. For purposes of clemency and equity consideration, the Board noted Petitioner provided his Counsel’s legal brief, a personal statement, a reference entitled “Military Drug Abuse Control Program Activities In Continental United States,” and five advocacy letters attesting to Petitioner’s character and contributions since discharge.

## 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 found no error in Petitioner’s OTH characterization of service discharge for separation by reason of unfitness due to use and possession of controlled substances. However, the Board reviewed Petitioner’s application under the guidance provided in reference (b).

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The Board noted Petitioner's disciplinary infractions and does not condone his misconduct, which resulted in his OTH characterization of service. 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 and 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 that documented his post-discharge good character, including his advocacy letters, and the successful tree-service business he started and continues to operate.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an HON discharge. The Board determined that an HON 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 GEN 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. 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 recommends the following corrective action.

That Petitioner be issued a new DD Form 214 indicating that he was discharged on 15 November 1974 with a characterization of service of "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.

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.

2/14/2024

