



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

█
Docket No. 10627-23
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 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 that his discharge characterization be upgraded, his narrative reason for separation be changed, and his reentry code be changed on a new Certificate of Release or Discharge from Active Duty (DD Form 214).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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, applicable statutes, regulations, and policies, to include references (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, the statute of limitations was waived in the interests of justice.

c. Petitioner enlisted in the United States Marine Corps and began a period of active service on 26 October 1992. On his enlistment application, he disclosed pre-service marijuana use and an arrest for driving while intoxicated.

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d. On 20 September 1994, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for UA from formation, and Article 112, for drunk on duty. Petitioner did not appeal this NJP. He was formally counseled due to this misconduct.

e. On 5 August 1994, Petitioner successfully completed Level III in-patient alcohol treatment.

f. On 23 December 1994, Petitioner was found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for UA from formation, Article 92, for disobeying a lawful order, and Article 112, for drunk on duty. Petitioner did not appeal this NJP.

g. On 31 January 1995, Petitioner was formally counseled for financial irresponsibility and poor judgment.

h. On 17 October 1995, Petitioner was formally counseled for absence from his appointed place of duty and for writing worthless checks.

i. On 16 March 1996, Petitioner was arrested for driving while intoxicated (DWI) with a Blood Alcohol Content (BAC) of .18, over twice the legal limit. He was screened for substance abuse and determined to have had an alcohol dependence relapse. He was formally counseled due to this misconduct.

j. On 10 April 1996, Petitioner's command initiated administrative separation proceedings based on unsatisfactory performance of duties, specifically alcohol dependence- chronic relapse. Petitioner waived his right to consult with qualified counsel, but as the least favorable characterization of service was a General (under Honorable Conditions) (GEN), he was not offered the right to a hearing before an Administrative Separation Board.

k. On 17 April 1996, the Separation Authority directed Petitioner's discharge with a GEN characterization of service.

l. Petitioner was separated from the Marine Corps on 26 April 1996 with an Other than Honorable (OTH) characterization of service, a narrative reason for separation of "Unsatisfactory Performance of Duties," a separation code of "JHJ4," and a reenlistment code of "RE-4."

m. Petitioner contends that he was young when he committed the misconduct, and had he been processed under the current Marine Corps Order, his service would have been characterized as GEN or Honorable. Petitioner requests clemency based on his post-service conduct. He provided evidence of post-service accomplishments and photos of his family.

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CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. With regard to Petitioner's request that his discharge characterization be upgraded, the Board reviewed Petitioner's record and identified an error on his DD 214. Specifically, Petitioner was notified of a GEN characterization and the Separation Authority directed separation with a GEN; however, his DD 214 reflects an OTH characterization. The Board concluded Petitioner's discharge characterization should be upgraded to General (Under Honorable Conditions).

Notwithstanding the recommended corrective action, the Board was not willing to grant an upgrade to an Honorable discharge. The Board considered Petitioner's record of service and his post-service clemency evidence. While the Board commends Petitioner's post-service conduct and accomplishments, they felt that he should still be held responsible for his repeated in-service misconduct. The Board highlighted that an Honorable discharge was appropriate only if the Marine's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. In this case, the Board concluded that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record. They noted that even though flawless service is not required for an Honorable discharge, a GEN discharge is still the appropriate characterization in this case considering the Petitioner's misconduct, even in light of reference (b).

Based on Petitioner's record of misconduct, the Board determined Petitioner's narrative reason for separation, separation code, and reenlistment code were proper and in compliance with all Department of the Navy and Marine Corp directives and policies at the time of his discharge. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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 any additional relief.

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) that shows that on 26 April 1996, his characterization of service was "General (Under Honorable Conditions)."

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.

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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.

1/26/2024

