



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

█
Docket No. 0310-24
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) SECDEF memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018 (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 and social security number (SSN) be changed on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosure (2) applies.
2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 8 April 2024, 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 and began a period of active duty on 28 September 1971. At the time of his enlistment, the Petitioner's enlistment contract reflected his SSN as XXX-XX-█. On 4 January 1972, Petitioner received nonjudicial punishment (NJP) for two periods of unauthorized absence (UA). On 27 March 1972, Petitioner began a second period of UA which lasted six days and resulted in his second NJP on 6 April 1972. On 5 October 1972,

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Petitioner was awarded the Combat Action Ribbon for his engagement with the enemy while deployed in Vietnam. On 27 November 1972, Petitioner received a third NJP for two instances of disrespectful in language towards a noncommissioned officer (NCO) and disobeying a lawful order. On 10 June 1973, Petitioner began a third period of UA which lasted 136 days. On 6 December 1973, Petitioner was convicted by special court martial (SPCM) for one period of UA, disrespect towards an NCO, and assault on an NCO. Petitioner was sentenced to a Bad Conduct Discharge discharge characterization, reduction to the inferior grade of E-1, confinement at hard labor for a period of four months, and forfeiture of pay in the amount of \$216.00 for a period of four months. On 11 February 1974, Petitioner decided to waive his right to request restoration to duty. On 8 April 1974, Petitioner received a fourth NJP for being disrespectful in language towards a superior commissioned officer and disobeying a lawful order from an NCO. On 3 May 1974, Petitioner began a third period of UA which lasted 143 days. On 7 August 1974, the U.S. Navy Court of Military Review affirmed Petitioner's findings of guilty and sentence. On 23 September 1974, Petitioner waive his right to request restoration to duty and expressed his desire to be discharge from the Marine Corps. On 7 October 1974, the Petitioner's SPCM was affirmed. On 18 October 1974, Petitioner was discharged with a BCD characterization by reason of SPCM conviction. On the same date, Petitioner was issued a DD Form 214 which incorrectly reflects his SSN as XXX-XX-[REDACTED] vice XXX-XX-[REDACTED].

d. Petitioner contends he just received a DD Form 214 with the wrong SSN, and it does not reflect which type of discharge he received. Petitioner claims he joined the military at age 16 and went to Vietnam straight out of bootcamp. Petitioner states in June 1974, his commanding officer found out that he was underage at that time he was 19 years of age. Petitioner claims he was told that he would be discharged with a General (Under Honorable Conditions) discharge characterization and, in six months, it would become an Honorable.

CONCLUSION:

Upon review and consideration of the evidence of record, the Board determined Petitioner's request warrants partial relief. Specifically, the Board determined Petitioner's DD Form 214 contains an administrative error since it does not reflect the correct SSN.

With regard to Petitioner's request that his discharge be upgraded, the Board determined Petitioner's assigned characterization of service remains appropriate. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in Petitioner's case in accordance with the Wilkie Memo. 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of Petitioner's misconduct and found that his conduct showed a

¹ The Board noted that Petitioner's DD Form 214 documents his BCD as an "Under Conditions Other Than Honorable" in box 9e.

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complete disregard for military authority and regulations. Further, the Board determined Petitioner was given ample opportunity to correct his conduct deficiencies but chose to continue to commit misconduct. Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Finally, the Board also noted that Petitioner provided no evidence, other than his personal statement, to substantiate his contentions.

As a result, the Board concluded Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 a discharge upgrade or granting a discharge upgrade as a matter of clemency or equity.

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

RECOMMENDATION:

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215) reflecting a correction to his SSN from "XXX-XX-[REDACTED]" to "XXX-XX-[REDACTED]."

That 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.

4/24/2024

[REDACTED]
Executive Director

Signed by: [REDACTED]