



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

██████████
Docket No. 456-24
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 w/ enclosures

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 be upgraded. Enclosure (1) applies.

2. The Board, consisting of ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 26 July 2023 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 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's application was not filed 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. Petitioner enlisted in the Marine Corps and served an initial Honorable period of active duty from 16 January 1984 until his immediate reenlistment on 25 June 1987¹.

¹ Petitioner's official military personnel file does not contain the discharge document from his first period of service, and an administrative counseling entry indicates that he reenlisted on 23 June 1987. However, the Board relied upon the date specified in his final discharge document and consistent with his reenlistment contract.

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c. In November 1987, Petitioner was subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 112a for knowingly and unlawfully using cocaine. Although he was reduced to the paygrade of E-2 and punished with 15 days of restriction and extra duty in addition to two months forfeiture of \$369 pay per month, his records contain no indication that he was processed for administrative separation for misconduct due to drug abuse or that he was placed on a drug surveillance program.

d. Petitioner served the following year without incident until, on 14 December 1988, he received administrative counseling for substandard performance, unacceptable behavior on liberty, and reporting to work late. This counseling included a warning that continued misconduct could result in his administrative discharge under adverse circumstances.

e. Two months later, Petitioner was issued a second administrative counseling warning for financial mismanagement due to dishonored checks from insufficient funds; however, he continued to serve for the next 17 months without further counseling or incident.

f. On 24 July 1989, Petitioner was subject to a second NJP for two specifications of violations of the UCMJ under Article 92 for failure to obey the lawful written order of his commanding officer and for failure to obey the lawful verbal order of his staff noncommissioned officer-in-charge. He was again reduced to the paygrade of E-2 and punished with 30 days of restriction and 14 days of extra duty. However, 15 days of his restriction was suspended for a period of two months.

g. On 10 August 1989, Petitioner received a third NJP for a violation of Article 92 due to breaking his restriction orders, for which his suspended period of restriction was vacated and he was punished with reduction to the paygrade of E-1 and 30 additional days of restriction.

h. Consequently, Petitioner was notified of processing for administrative separation by reason of misconduct due to a pattern of misconduct and elected to waive applicable rights incident to that notification. His commanding officer recommended that Petitioner be separated under Other Than Honorable (OTH) conditions.

i. Following conclusion of legal review, Petitioner's administrative separation was approved, and he was so discharged on 22 September 1989.

j. Petitioner contended that his request warrants relief on the basis of clemency. He notes that his first NJP, for which he claims not to recall the specifics, was not considered serious enough grounds to process him for separation. He further claims that the counseling and two NJPs, which later occurred in [REDACTED] were relatively minor and primarily attributable to confusion without aggravating circumstances. With respect to the dishonored check for which he received counseling, he states that it occurred just after he had gotten married, was a new father, and his wife had difficulty managing family finances. He claims that he learned more about finances and established a budget after the counseling to avoid further issues. Regarding his second NJP, he states that he was told to attend mandatory PT but had approved leave paperwork at a time prior to being able to process such requests electronically. He argues that

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his NCOIC told him to pick up his leave papers and go on leave, which he believes resulted in a misunderstanding between his OIC and NCOIC. He claims that he wanted to defend himself at court-martial but his OIC advised against it, with a promise to speak on his behalf at NJP.

However, he further claims that his OIC not only did the opposite at the NJP, speaking against him for the UA, but also alleges that he was not allowed to call the NCOIC as a witness, which he believes violated his rights. He likewise explains extenuating circumstances of his third NJP for restriction breaking, claiming that, while on restriction, he and another Marine missed chow due to work and went across the street to get food and return to the barracks. Finally, he claims that he did not realize getting food would violate his restriction. He believes that, in light of his purportedly flawless record in the 34 years since his discharge, his OTH does not reflect his character, volunteerism, mentorship, and community engagement.

k. For the purposes of clemency and equity consideration, he included a brief from his legal counsel, a personal statement, copies of service records, documentation of a background check by the Federal Bureau of Investigation reflecting no further criminal record history, certificates of his post-discharge accomplishments, and seven character letters.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of relief. The Board reviewed the application under the guidance provided in reference (b).

In this regard, the Board noted Petitioner's misconduct and does not condone it; however, the Board concurred with Petitioner's general contention that the misconduct which instigated his administrative discharge processing for a pattern of misconduct was of a relatively minor nature. While the Board disagreed with Petitioner's belief that his initial drug abuse offense was minor, the Board noted that he was allowed to continue on active duty after his drug abuse. Further, the Board was not persuaded by Petitioner's exculpatory explanations of his misconduct and determined he was afforded all the necessary due process required under the applicable regulations. Notwithstanding these findings, the Board favorably considered Petitioner's evidence of post-discharge rehabilitation and character, specifically observing that Petitioner's lack of federal criminal record in the more than 30 years since his discharge and the efforts he has undertaken to further his abilities in leadership and finance, and his numerous letters of support demonstrating the respect he has earned as result of his commitment to his community and to helping others. As a result, the Board found that the totality of favorable matters in support of clemency outweighed the misconduct which resulted in Petitioner's OTH discharge. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to General (Under Honorable Conditions) and change his reason for separation, separation authority, and separation code to reflect a "Secretarial Authority" discharge.

Despite the below recommended corrective action, the Board determined Petitioner's assigned reentry code remains appropriate in light of his record of misconduct and unsuitability for further

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military service. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending 22 November 1989, his characterization of service was "General (Under Honorable Conditions)," under the authority of "MARCORSEPMAN par. 6214," for the narrative reason of "Determination of Service Secretary – Secretary of the Navy Plenary Authority," with a separation code of "JFF1."

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.

8/21/2024

