



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

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Docket No. 0675-24
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 ■■■■■ USMCR

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
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) requesting characterization of service be changed to Honorable on his Certificate of Release or Discharge from Active Duty (DD Form 214). Enclosures (1) through (3) apply.

2. The Board, consisting of ■■■■■, ■■■■■, and ■■■■■, reviewed Petitioner's allegations of error and injustice on 18 March 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. 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 Reserves and began a period of initial active duty for training (IADT) on 7 September 1973. Petitioner's enlistment contract required completion of IADT, followed by satisfactory participation, annually, in either forty-eight scheduled drills plus 17 days active duty for training or thirty days of active duty for training.

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c. On 3 January 1974, Petitioner received non-judicial punishment (NJP) for unauthorized absence from 28 December 1973 to 2 January 1974. On 4 January 1974, Petitioner commenced a thirty-day period of UA, during which time he was apprehended by civil authorities for burglary and subsequently turned over to military control on 5 February 1974. On 12 April 1974, Petitioner was found guilty at Special Court Martial (SPCM) of UA from 4 January 1974 to 5 February 1974 and being disrespectful toward a Corporal. On 15 May 1974, Petitioner completed his IADT. Upon his release from active duty, Petitioner was issued a DD Form 214 that contained several errors. Specifically, block 9.a states: "Release from Initial Tour of Active Duty for Training," and it should indicate "Expiration of Reserve Special enlistment program (IADT), 9.c states: "MARCORSEPMAN 203" and it should indicate: "MARCORSEPMAN para 6009," block 9.e states: "Under Conditions Less Than Honorable" and it should indicate: "Under Honorable Conditions," block 10 states: "RE-3D" and it should indicate: "RE-3B," and the separation program designator code should indicate: "MBK2."

d. On 25 October 1974, return receipts indicate Petitioner received a copy of the Satisfactory Drill Participation Policy, a notice of unexcused drill absences on 14 September 1974, 15 September 1974, 12 October 1974, and 13 October 1974, and the Commanding Officer's Notice of intention to recommend Petitioner's assignment to active duty for missing drills in June, September, and October 1974.

e. On 3 March 1975, the Commandant of the Marine Corps disapproved the Commanding Officer's request for involuntary assignment to active duty and directed the command to discharge Petitioner by reason of unsuitability or unfitness, as appropriate.

f. On 20 April 1975, return receipt indicates that Petitioner's household received notification of unsatisfactory participation in drills on 19 April 1975 and 20 April 1975. On 24 July 1975, unbeknownst to Petitioner's command, Petitioner began serving a civilian sentence of a minimum of one year in prison for arson, theft, and burglary. The next three notices of unsatisfactory participation (for 11 and 12 October 1975, 23 November 1975, and 13 and 14 December 1975) were all returned to the command with the stamp: "moved, not forwardable."

g. On 15 December 1975, Petitioner was sent, via registered mail, to his last known address, notification of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of unfitness, based upon an established pattern of shirking. Petitioner did not respond, and an administrative discharge board (ADB) was convened. The ADB found that Petitioner had committed misconduct and recommended that he be discharged by reason of unfitness due to an established pattern of shirking. The separation authority concurred with the ADB and approved and directed an undesirable discharge by reason of unfitness due to shirking. On 16 March 1976, Petitioner was issued an undesirable discharge certificate.

h. Petitioner previously applied to this Board for an upgrade to his characterization of service where he contended that his discharge was unjust because he had low intelligence, could not read or write, and should qualify for defective enlistment. He also argued that, post-service, he was sentenced to life in prison for second degree homicide on two separate occasions. The Board denied his request on 4 June 2014.

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i. Petitioner now contends that he was incarcerated when his administrative discharge paperwork was sent to him, struggled with substance abuse, and relapsed in boot camp.

CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Board determined that Petitioner's request warrants partial relief in the interests of justice. Specifically, as previously discussed, the Board noted Petitioner's DD Form 214 contains errors that require correction.

Notwithstanding the recommended corrective action below, the Board found no error or injustice in Petitioner's Undesirable Discharge Certificate, for the period ending 16 March 1976, for unfitness due to an established pattern of shirking. 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 the previously mentioned contentions raised in his application.

After thorough review, the Board concluded Petitioner's potentially mitigating factors were insufficient to warrant granting the relief requested. In making this finding, the Board considered the seriousness of Petitioner's misconduct and the likely negative impact it had on the good order and discipline of his command. The Board also determined that there was no merit to the Petitioner's contention that he was incarcerated at the time of his administrative separation processing and noted that it was the Petitioner's responsibility to notify the Marine Corps of his incarceration and of his new mailing address so he could receive correspondence.

Therefore, the Board determined the Petitioner's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 the relief he requested or granting him relief as a matter of clemency or equity.

RECOMMENDATION:

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

Headquarters Marine Corps (HQMC) shall issue Petitioner a new DD Form 214, for the period ending 15 May 1974, with the following corrections: block 9.a from "Release from Initial Tour of Active Duty for Training," to "Expiration of Reserve Special enlistment program (IADT), block 9.c from "MARCORSEPMAN 203" to "MARCORSEPMAN para 6009," block 9.e from "Under Conditions Less Than Honorable" to "Under Honorable Conditions," block 10 from "RE-3D" to "RE-3B," and the separation program designator code should indicate: "MBK2."

That no further changes be made to Petitioner's record.

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That a copy of this record of proceedings be filed in Petitioner's naval record.

4. It is certified that 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.

4/3/2024

