



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

██████████
Docket No. 2710-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████
██████████ XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 July 2018 (Wilkie Memo)

Encl: (1) DD Form 149 with attachments
(2) Case summary

1. Pursuant to the provisions of reference (a), Petitioner filed enclosure (1) with the Board for Corrections of Naval Records (Board), requesting that his naval record be corrected to upgrade his characterization of service and to make other conforming changes to his DD Form 214.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 12 April 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 interests of justice to review the application on its merits.

c. The Petitioner enlisted in the U.S. Marine Corps and began a period of active service on 24 October 2000. Petitioner's pre-enlistment physical examination, on 16 August 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 27 November 2003, Petitioner was involved and injured in a shooting while on liberty in ██████████, ██████████. Petitioner suffered three (3) gunshot wounds. Petitioner refused to cooperate with local authorities when questioned and was subsequently arrested. However, local authorities released him within forty-eight (48) hours without any charges pending.

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e. On 19 March 2004 Petitioner's command issued him a "Page 11" counseling warning (Page 11) documenting his lack of initiative and his shortcomings in judgment, reliability, and obedience; specifically, his failure to be at his appointed place of duty on time on several separate occasions. The Page 11 also documented Petitioner's habitual tardiness. The Page 11 advised Petitioner that a failure to take corrective action may result in administrative separation or limitation on further service. Petitioner did not submit a Page 11 rebuttal statement.

f. On 5 April 2004, Petitioner received non-judicial punishment (NJP) for failing to obey a lawful order/regulation when he failed to obtain a CO authorization letter prior to purchasing two (2) High Point .380 caliber handguns. Petitioner did not appeal his NJP. On 6 April 2004, Petitioner's command issued him a Page 11 documenting his NJP. The Page 11 also documented Petitioner's receipt of a previous Page 11 for being "UA" and for a "failure to properly hygiene" himself. Petitioner again elected not to submit a Page 11 rebuttal statement.

g. On 14 April 2004, Petitioner's command notified him of administrative separation proceedings by reason of misconduct due to the commission of a serious offense. Petitioner waived his right to consult with counsel but elected his right to request an administrative separation board (Adsep Board).

h. On 14 April 2004, Petitioner's commanding officer (CO) recommended to the Separation Authority that Petitioner receive an under other than honorable conditions (OTH) characterization of service. In his recommendation, the Petitioner's CO stated:

The recommendation for administrative discharge is based on [REDACTED] lack of judgment, trustworthiness, and moral character. His behavior is a liability to this command. A complete disregard for the law led to his injuries, and could have resulted in death or serious injury to innocent bystanders. His actions have tarnished the Marine Corps' reputation and are undermining its core values. If [REDACTED] [REDACTED] were to remain among the Marine Corps ranks, it would only compound the adverse effect of this incident and would adversely affect the morale, discipline, and military effectiveness of this command. Although you will be making the determination, if he is separated, I am recommending he receive a discharge under other than honorable conditions.

i. On 8 June 2004, an Adsep Board convened to hear Petitioner's case. At the Adsep Board, Petitioner was represented by a Marine Corps Judge Advocate and Petitioner provided an unsworn statement. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously voted that the evidence proved Petitioner's misconduct as alleged. The Adsep Board members then unanimously voted to separate Petitioner with an OTH characterization of service.

j. In the interim, Petitioner's separation physical examination, on 9 July 2004, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 15 July 2004, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

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k. Petitioner requested clemency in the form of a discharge upgrade. In short, Petitioner contended that he was within weeks of his end of active service, and that he was recommended for separation based on speculative evidence relied on by the Adsep Board. Petitioner argued that even if the evidence at the Adsep Board supported misconduct, the misconduct itself did not support an OTH characterization of service. Petitioner contended he had been an outstanding Marine with no previous negative marks in his record and that the misconduct was relatively minor. Further, Petitioner contended that his post-service conduct and positive societal contributions were worthy of granting clemency in the form of a discharge upgrade and provided evidence of his accomplishments.

CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief.

The Board initially determined that Petitioner's administrative separation was legally and factually sufficient, and in accordance with all Department of the Navy directives and policy at the time of his discharge.

Notwithstanding, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's cumulative misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's serious misconduct, the Board concluded that no useful purpose is served by continuing to characterize the Petitioner's service as having been under OTH conditions, and that a discharge upgrade to "General (Under Honorable Conditions)" (GEN) strictly on clemency and leniency grounds is appropriate at this time. In addition, based on the same rationale, the Board determined it was in the interest of justice to change Petitioner's basis for separation to "Secretarial Authority."

In granting his discharge upgrade and change to his reason for separation, the Board cited Petitioner's exemplary post-service personal and professional accomplishments and conduct, and his notable community service and charitable involvement.

However, the Board was not willing to grant an Honorable discharge characterization. The Board determined 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. The Board concluded by opining that significant negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record and that a GEN discharge characterization was appropriate and no higher. The Board determined the record reflected that Petitioner's misconduct was intentional and willful and demonstrated he was unfit for further service. The Board also determined that the evidence of record did not demonstrate that Petitioner was not mentally responsible for his conduct or that he should not be held accountable for his actions. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of

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the circumstances and purely as a matter of clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

Notwithstanding the recommended corrective action below, the Board did not find a material error or injustice with the Petitioner's original reenlistment/reentry code and would not change it. The Board concluded the Petitioner was assigned the correct reenlistment/reentry code based on the totality of his circumstances, and that such notation was proper and in compliance with Department of the Navy directives and policy at the time of his discharge. Ultimately, the Board determined any injustice in Petitioner's record is adequately addressed by the recommended corrective action.

RECOMMENDATION:

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

That Petitioner's character of service, for the period ending 15 July 2004, be changed to "General (Under Honorable Conditions)," that Petitioner's separation authority be changed to "MARCORSEPMAN par. 6214," the separation code be changed to "JFF1," and the narrative reason for separation be changed to "Secretarial Authority."

Petitioner shall be issued a new DD Form 214, Certificate of Release or Discharge from Active Duty.

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.
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.

4/16/2024

