



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

██████████  
Docket No. 5027-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER ██████████  
██████████ 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), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction 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 5 July 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 duty service on 29 January 1990. Petitioner's pre-enlistment physical examination, on 19 January 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 19 August 1990, Petitioner commenced an unauthorized absence (UA). On

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18 September 1990, Petitioner's command declared him to be a deserter. Petitioner's UA terminated after thirty-one (31) days on 19 September 1990.

e. On 3 October 1990, Petitioner voluntarily submitted a request for an administrative discharge in lieu of trial by court-martial for his 31-day UA. As part of his written request, he voluntarily admitted guilt of his charged UA offense. However, on 23 October 1990, the General Court-Martial Convening Authority (GCMCA) denied Petitioner's request and moved forward with a Special Court-Martial (SPCM).

f. On 31 October 1990, pursuant to his guilty pleas, Petitioner was convicted at a SPCM for his 31-day UA. Petitioner was sentenced to forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), confinement at hard labor, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD).

g. In the interim, Petitioner's separation physical examination, on 15 November 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 6 March 1991, the GCMCA approved the SPCM sentence as adjudged. On 11 July 1991, the Naval Clemency and Parole Board did not grant Petitioner any clemency. On 30 June 1992, the Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence. Upon the complete of appellate review, Petitioner was discharged from the Marine Corps with a BCD and was assigned an RE-4 reentry code.

h. On 12 May 1997, the Naval Discharge Review Board (NDRB) denied Petitioner's discharge upgrade request. The NDRB noted two administrative errors in the preparation of Petitioner's DD Form 214, and recommended certain corrections. However, the NDRB's recommended changes were never officially reflected on a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty).

i. Petitioner's DD Form 214 currently reflects a separation code of "JJC2" in block 26, and the narrative reason for separation of "As result of Courts Martial – DESERTION." Both such entries correspond to a BCD awarded at a SPCM for the more serious desertion charge, and not for a UA offense.

j. Petitioner contended, in part, that he was only absent for twenty-five (25) and not thirty (30) days, and he also argued he did not desert from the Marine Corps and was only guilty of UA.

k. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence Petitioner provided in support of his application.

#### CONCLUSION:

Upon review and liberal consideration of all the evidence of record, the Board concluded that Petitioner's request warrant partial relief. Specifically, the Board determined that it was an error to describe Petitioner's narrative reason as being for the more serious desertion offense when clearly he was only charged at his SPCM with UA under UCMJ Article 86. Accordingly, the

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Board initially determined that the Petitioner should instead have a narrative reason and separation code that reflects a SPCM conviction for a UA offense, and not a UCMJ Article 85 (Desertion) charge.

Notwithstanding the recommended corrective action below, the Board determined no further relief was warranted. The Board determined Petitioner's contention that he was only in a UA status for twenty-five days to be without merit. The Board observed that Petitioner pleaded guilty to the charged UA offense and specification at his SPCM (a 31-day UA charge). The Board further noted that a plea of guilty is the strongest form of proof known to the law. Based upon Petitioner's plea of guilty alone and without receiving any evidence in the case, a court-martial could find Petitioner guilty of the offenses to which he pleaded guilty. The Board noted that during a SPCM guilty plea such as Petitioner's, the Military Judge (MJ) will only accept a guilty plea once they were satisfied that Petitioner fully understood the meaning and effect of his guilty plea, and only after determining that his plea was made voluntarily, of his own free will, and with full knowledge of its meaning and effect. On the record, the MJ would have also had Petitioner state on the record that he discussed every aspect of his case including the evidence against him and possible defenses and motions in detail with his lawyer, and that Petitioner was satisfied with his counsel's advice. Further, the MJ would have also had Petitioner state on the record that he was pleading guilty because he felt in his own mind that he was guilty of the entire 31-day UA. Moreover, the Uniform Code of Military Justice states that during the appellate review process, the appellate court may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in Petitioner's case, the appellate court surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, or procedural defects were identified in Petitioner's case.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant additional relief in accordance with the Wilkie Memo. After thorough review, the Board concluded any potentially mitigating factors were insufficient to warrant relief. The Board determined the record reflected that Petitioner's misconduct was willful and intentional 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Petitioner's overall active duty trait average calculated from his available performance evaluations during his enlistment was approximately 2.033 in conduct. Marine Corps regulations in place at the time of Petitioner's discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that Petitioner's misconduct was not minor in nature and that his conduct marks during his active duty career were a direct result of his misconduct and substandard performance of duty.

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Additionally, the Board did not believe that Petitioner's record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of his conduct and/or performance greatly outweighed any positive aspects of his military record. The Board determined that characterization with a BCD is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board noted that at the time of Petitioner's UA, the Marine Corps was beginning to prepare for Operations Desert Shield/Desert Storm in Kuwait and Iraq.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that Petitioner's misconduct and disregard for good order and discipline clearly merited his discharge. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant upgrading Petitioner's characterization of service or granting clemency in the form of an upgraded characterization of service.

Finally, the Board did not find a material error or injustice with the Petitioner's original reentry code. The Board concluded the Petitioner was assigned the correct reentry/reenlistment 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.

#### RECOMMENDATION:

In view of the foregoing, the Board finds the existence of material errors warranting the following corrective action.

That Petitioner be issued a "Correction to DD Form 214, Certificate of Release or Discharge from Active Duty" (DD Form 215), for the period ending 7 December 1992, to indicate the following changes:

That Petitioner's Block 28 narrative reason for separation should be changed to "As a Result of a Court-Martial (SPCM) - Other," and the Block 26 separation code be changed to "JJD2."

Following the corrections to the DD Form 214 for the period ending 7 December 1992, that all other information currently listed on such DD Form 214 remain the same.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

7/16/2024

