



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

██████████
Docket No. 5196-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. 1552
(b) USECDEF 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
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, a former enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his Other Than Honorable (OTH) characterization of service be upgraded to Honorable. Enclosures (1) through (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 10 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, 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 interest of justice to waive the statute limitation and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 24 March 1988. On 2 April 1989, he received non-judicial punishment (NJP) for sitting on post. On 22 May 1989, he received NJP for unauthorized absence (UA) for one day. On 3 February 1992,

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Petitioner was formerly counseled on his poor initiative, judgement, and returning from the field during a filed exercise due to an illness and not reporting or returning to the field. On 15 May 1992, he received NJP for being UA for seven hours and failure to obey a lawful order. On 15 June 1992, he received NJP for absence from appointed place of duty and disobeying a lawful order. On 15 May 1993, he received NJP for two specifications of absence from appointed place of duty, disrespectful in language and deportment toward three NCOs, disobeying a lawful order, and wrongfully using provoking speech. On 24 September 1993, he received NJP for UA for two days.

d. Unfortunately, not all the documents pertinent to Petitioner's administrative separation are in his official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Petitioner's Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that he was separated from the Marine Corps on 19 November 1993 with an Other Than Honorable (OTH) characterization of service, his narrative reason for separation is "Misconduct (Pattern of Misconduct)," his separation code is "HKA," and his reenlistment code is "RE-4."

e. Petitioner contends his discharge was due to a First Sergeant being jealous because he received a Combat Action Ribbon, the First Sergeant berated him and put his finger in his chest several times, and this led to his misconduct.

CONCLUSION:

Upon review and consideration of all the evidence of record, and in light of reference (b), the Board concludes that Petitioner's request merits partial relief. The Board notes Petitioner's disciplinary infraction and does not condone his misconduct. However, the Board concluded, purely as a matter of injustice, it was appropriate to change Petitioner's characterization of service to General (Under Honorable Conditions) (GEN). In this regard, the Board noted that Petitioner's misconduct was minor in nature and his performance/conduct mark were sufficient to support an upgrade to GEN.

Notwithstanding the recommended corrective action below, the Board was not willing to grant an upgrade to an Honorable discharge. 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 certain negative aspects of the Petitioner's conduct and/or performance outweighed the positive aspects of his military record even under the liberal consideration standards for mental health conditions, and that a GEN discharge characterization and no higher was appropriate. Further, the Board concluded Petitioner's Narrative Reason for Separation, SPD code, reentry code, and Separation Authority remains appropriate based on his record of misconduct. Ultimately, the Board determined any injustice in Petitioner's case is adequately addressed with the recommended corrective action.

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

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RECOMMENDATION:

That Petitioner be issued a new DD Form 214 that indicates, on 19 November 1993, his characterization of service was "General (Under Honorable Conditions)."

That no further changes be made to the record.

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 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.

7/29/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]