



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

██████████
Docket No. 6736-24
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.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 27 September 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 originally enlisted in the U.S. Marine Corps and began a period of active service on 23 October 1989. Petitioner's pre-enlistment physical examination, on 18 October 1989, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 31 May 1990 Petitioner commenced a period of unauthorized absence (UA). Petitioner's command declared him to be a deserter and dropped him from the rolls on 30 June

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1990. Petitioner's UA terminated with his arrest by civilian authorities, on 2 February 1991, in [REDACTED]

e. On 19 March 1991, pursuant to his guilty plea, Petitioner was convicted at a Special Court-Martial (SPCM) of his long-term UA (approx. 242 days). Petitioner was sentenced to confinement for ninety (90) days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and to be separated from the Marine Corps with a Bad Conduct Discharge (BCD).

f. However, after Petitioner was released from confinement, on 16 May 1991, he commenced another UA. Petitioner's command declared him to be a deserter and dropped him from the rolls on 17 June 1991.

g. On 6 September 1991, the Convening Authority (CA) approved the SPCM sentence. On 2 January 1992, the Naval Clemency and Parole Board denied Petitioner any clemency. On 15 January 1992 the US Navy-Marine Corps Court of Military Review (CMR) affirmed the SPCM findings and sentence.

h. On 11 March 1992 Petitioner's second long-term UA terminated. On 23 April 1992, pursuant to his guilty plea, Petitioner was convicted at a second SPCM for another long-term UA (approx. 296 days). Petitioner was sentenced to confinement for five (5) months, forfeitures of pay, and another Bad Conduct Discharge (BCD). Pursuant to the terms of Petitioner's pretrial agreement, all confinement in excess of time served in pretrial confinement was suspended.

i. On 4 May 1992, Petitioner was placed on appellate leave to await his BCD. On 30 November 1992, the CA approved the findings and sentence of Petitioner's second SPCM, except suspended any confinement in excess of 47 days. On 17 August 1993, the CMR affirmed the SPCM findings and sentence from Petitioner's second court-martial.

j. Upon the completion of appellate review for Petitioner's first SPCM, on 6 October 1994, Petitioner was discharged from the Marine Corps with a BCD and was assigned an RE-4 reentry code. He was issued a DD Form 214 that erroneously included "desertion" in his narrative reason for separation.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as noted above, the Board observed that both of Petitioner's SPCMs were convictions for UA offenses (UCMJ Article 86), and not for desertion (UCMJ Article 85). Accordingly, the Board determined that administrative changes were required to both the narrative reason for separation, as well as the separation code, to reflect a BCD based on a SPCM conviction for a UA offense, and not desertion.

Notwithstanding the recommended corrective action below, the Board determined no additional relief was warranted.

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The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in accordance with the Wilkie Memo. These included, but were not limited to, his desire for a discharge upgrade and change to his reason for separation to secretarial authority. His application contends that: (a) Petitioner was tremendously proud to have become a Marine and, when he was not forced to choose his family over the USMC based on circumstances outside of his control, Petitioner was a very good and faithful Marine, (b) unfortunately, Petitioner was essentially left with no other choice but to return home, as Petitioner would have family emergency after family emergency that required his physical presence and emotional and financial support, (c) with E-2 pay simply not affording him the ability to provide for himself and support his mother, Petitioner left the military and obtained factory work where he was able to make over three times as much as his military pay, (d) given all that Petitioner has accomplished in his life since his discharge, allowing his record to continue to reflect a BCD would be a severe and unnecessary injustice, (e) Petitioner is an incredible man who has dedicated the majority of his long life to public service, and service to one's country comes in different forms, (f) nearly 20 years of Petitioner contributing to the learning and education of America's youth did far more for this country than the typical Private who serves less than a handful of years in the military, and (g) at a bare minimum, Petitioner's DD Form 214 must be changed to remove the word "Desertion," as Petitioner was never convicted of desertion and that was not the reason for his separation, and a third period of "lost time" in box 29 never occurred and must be removed as well. For purposes of clemency and equity consideration, the Board considered the totality of the evidence Petitioner provided in support of his application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief, with the exception of the aforementioned administrative changes to Petitioner's DD Form 214. 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 Petitioner's 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 serious 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 determined that the simple fact remained was that Petitioner left the Marine Corps while he was still contractually obligated to serve and he went into a UA status without any legal justification or excuse on two (2) separate occasions totaling no less than 538 days. The Board determined the record clearly reflected that Petitioner's misconduct was willful and intentional and demonstrated he was unfit for further service. Moreover, 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.

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The Board also 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 2.7 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 noted that Petitioner's record reflected two (2) SPCMs, both for long-term UAs. The Board concluded that Petitioner's cumulative misconduct was not minor in nature and that his conduct marks during his active duty career were a direct result of Petitioner's serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified his BCD characterization.

As a result, the Board determined that there was no impropriety or inequity in Petitioner's discharge and concluded that his misconduct and disregard for good order in discipline clearly merited Petitioner's punitive discharge. While the Board carefully considered the evidence Petitioner submitted in mitigation, 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 relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence Petitioner provided was insufficient to outweigh the seriousness of his misconduct. Accordingly, given the totality of the circumstances, the Board determined that Petitioner's discharge upgrade request does not merit relief.

Lastly, the Board disagreed with Petitioner's contentions to remove one of the "time lost" entries on his DD Form 214. The Board noted that "time lost" reflects both time spent in a UA status, as well as time spent in military confinement, both before and after a conviction.¹ The Board noted that Petitioner was placed in pretrial confinement prior to his second SPCM, and that the entry "920312-920421" on Petitioner's DD Form 214 documents Petitioner's pretrial confinement prior to his second SPCM that occurred on 23 April 1992. Thus, the Board was not persuaded by Petitioner's argument to remove the entry. The Board also concluded that Petitioner's assigned narrative reason for separation remains appropriate with the exception of the of the "desertion" reference.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of a material error 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 separation date/period ending 6 October 1994, to reflect the following changes:

Block 26 shall change in its entirety to: "JJD2."

¹ See generally, 10 USC 972, for the requirement for enlisted personnel to make up time lost.

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Block 28 shall change in its entirety to: “As a Result of a Court-Martial (SPCM) - Other.”

Following the corrections to the DD Form 214 for the separation date/period ending 6 October 1994, that all other information as previously 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 corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/2/2024

