



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

[REDACTED]
Docket No. 11277-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]
[REDACTED] XXX XX [REDACTED] 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 to Honorable and change his reason for separation.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 21 February 2025 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 14 January 2002. Petitioner's pre-enlistment physical examination, on 19 October 2001, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

d. On 22 October 2003, a Navy Drug Screening Laboratory message indicated Petitioner tested positive for both "MDMA" (a.k.a. "ecstasy") and "MDA," both above the established Department of Defense testing minimum cutoff levels. On 28 October 2003, Petitioner received

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMC

non-judicial punishment (NJP) for the wrongful use of both MDMA and MDA. Petitioner received the maximum permitted punishment at NJP. Petitioner did not appeal his NJP.

e. On 8 March 2004, Petitioner's commanding officer (CO) recommended to the Separation Authority (SA) that he be separated from the Marine Corps with an under Other Than Honorable discharge characterization (OTH) for his drug abuse. The CO stated, in part:

[Petitioner] has been with [REDACTED] for about 1 year and 8 months. In that time he has not distinguished himself as a stellar Marine... This Marine has not shown remorse or assisted in the further investigation of the sale of these substances. He lacks the courage and discipline to make the right decisions as a Marine and soils the honor of those that do. This type of behavior and lack of judgment is not acceptable for any Marine. Any action short of separation would send the wrong message and be detrimental to the good order and discipline of this Command. I recommend this Marine be separated with an Other Than Honorable discharge.

f. On 29 March 2004 Petitioner's command notified him of administrative separation proceedings by reason of misconduct due to drug abuse. The Petitioner waived his rights to consult with counsel, submit statements, and to request an administrative separation board.

g. On 29 March 2004 the Commanding Officer, [REDACTED] recommended to the SA that he receive an OTH discharge. The [REDACTED] stated, in part:

[Petitioner] has proven to his command and myself that he has no potential to learn from his mistake and will not make the right choices in the future. Furthermore, [Petitioner's] current performance in this unit has proven to all members in his chain of command that he cannot serve the remainder of his enlistment in an honorable manner. Therefore, I recommend that this Marine be separated from the Marine Corps with an Other Than Honorable conditions discharge.

h. On 5 May 2004, the SA approved and directed Petitioner's discharge for misconduct with an OTH discharge characterization. Ultimately, on 5 May 2004, Petitioner was discharged from the Marine Corps for misconduct with an OTH characterization of service and was assigned an "RE-4B" reentry code.

i. Petitioner requested clemency in the form of a discharge upgrade and to make certain additional conforming changes to his DD Form 214. In short, Petitioner argued that he was the victim of horrific child abuse and neglect, and that the only way he knew to battle the resultant demons was through substance abuse. Petitioner argued that he is a small business owner, worked hard to overcome his addiction, and that he has used his story and experiences to help others. Petitioner proffered a personal statement, his counsel's brief with multiple exhibits, and advocacy letters as evidence of his good character, post-service achievements, and accomplishments.

CONCLUSION:

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMC

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

However, in keeping with the letter and spirit of the Wilkie Memo, and although the Board does not condone the Petitioner's drug-related misconduct, the Board noted that flawless service was not required for discharge upgrade consideration. Accordingly, while not necessarily excusing or endorsing the Petitioner's 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. Further, based on the same rationale, the Board determined that Petitioner's reason for separation should be changed to reflect a Secretarial Authority discharge. In recommending this relief, the Board cited his notable post-service conduct and the passage of time.

Notwithstanding the recommended corrective action below, 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 and no higher was appropriate. Additionally, in light of the Wilkie Memo, the Board still similarly concluded after reviewing the record holistically, and given the totality of the circumstances and purely as a matter of clemency and leniency, that the Petitioner only merits a GEN characterization of service and no higher.

Finally, the Board did not find a material error or injustice with the Petitioner's original "RE-4B" reentry code. The Board concluded the Petitioner was assigned the correct 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 that 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 shall be issued a new DD Form 214, Certificate of Release or Discharge from

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED]

[REDACTED] XXX XX [REDACTED] USMC

Active Duty, for the period ending 5 May 2004, indicating his character of service was "General (Under Honorable Conditions)," for the narrative reason for separation "Secretarial Authority," under the separation authority "MARCORSEPMAN par. 6214," with the separation code be changed to "JFF1."

No further changes to Petitioner's record is merited.

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.

3/14/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]