



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

██████████
Docket No. 7327-25
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 discharge be upgraded, his narrative reason for separation be changed to reflect "Secretarial Authority," and that his reenry code be change to "RE-1." Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 27 March 2027 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 references (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 Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty 24 March 1998. After a period of continuous Honorable service, Petitioner immediately reenlisted for the second time and commencing his third period of active duty on 27 June 2006.

d. On 30 November 2007, a command investigation was initiated into allegations of personal misconduct involving a sexual relationship with a Lance Corporal. Initially, Petitioner denied an improper relationship; however, in a statement to the investigating officer (IO), on 19 December 2007, Petitioner, who was married at the time, admitted to participating in an

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
XXX XX [REDACTED] USMC

improper relationship with the junior enlisted female. Further, after being ordered not to contact the Lance Corporal, Petitioner violated that order and solicited her in his attempt to obstruct the investigation.

e. On 31 December 2007, Petitioner was issued an adverse fitness report documenting his admission.

f. On 9 May 2008, charges against Petitioner were referred to Special Court-Martial (SPCM); however, via a pre-trial agreement signed on 29 July 2008, the Convening Authority agreed to withdraw the charges and dispose of them at nonjudicial punishment (NJP). In exchange, Petitioner agreed to waive his right to request a hearing before an administrative separation board and, although his PTA specified the specific charges to which he agreed to plead either guilty or not guilty, he acknowledged that the convening authority retained discretion to find him guilty of any or all of the charged offenses.

g. On 1 August 2008, Petitioner was found guilty at NJP of the entirety of the charges and specifications that were originally referred to SPCM. As punishment, he was issued a letter of reprimand. His violations of the Uniform Code of Military Justice included Article 81, for conspiracy to obstruct and impede an IO in the execution of his duties by withholding information and making false statements; Article 92, by being derelict in the performance of his duties in that he willfully failed to obey an Air Station order by proceeding outside the area of authority, while operating as the command duty officer, without prior approval; Article 92, for failure to obey lawful order, specifically a military protective order (MPO) which directed him to have no contact with his lance corporal (LCpl) paramour, by wrongfully having personal contact with the same; Article 107, for knowingly making a false statement to the IO that there was no inappropriate contact or unprofessional relationship between himself and the LCpl; Article 125, for committing sodomy on divers occasions with the LCpl while he was married to another; Article 134, for wrongfully having sexual intercourse with the LCpl, who was a married woman and was not his wife; and Article 134, for wrongfully endeavoring to impeded an investigation by withholding information from the IO.

h. On 8 August 2008, Petitioner was notified of processing for administrative separation by reason of misconduct due to commission of a serious offense. Consistent with the terms of his PTA, he voluntarily waived his right to a hearing before an administrative separation board.

i. Ultimately, Commanding Officer, Marine Corps [REDACTED], approved the recommendation for his discharge under Other Than Honorable (OTH) conditions, and he was so discharged on 9 September 2008. At the time of his discharge, Petitioner was issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that did not annotate his continuous Honorable service from 24 March 1998 to 26 June 2006.

j. Petitioner contends that his first two enlistments qualify as periods of Honorable service. He asserts that he was a good Marine with an excellent career who made a mistake in having a relationship with a junior Marine who was not a member of his company. He feels his OTH discharge was harsh when considering that he also lost his career and faced both divorce from his

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]

XXX XX [REDACTED] USMC

spouse and loss of respect from his children. He also submits evidence of rehabilitation for consideration of post-service character and accomplishments. In addition to his legal counsel's brief, which thoroughly addresses the clemency factors he believed are applicable, Petitioner also submitted his service records and awards, several character letters, marriage certificate, a Wounded Warrior donation receipt, and his BS diploma (2007).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. Specifically, as discussed previously, Petitioner's DD Form 214 does not annotate his period of continuous Honorable service and requires correction.

Notwithstanding the recommended corrective action below, the Board determined Petitioner's assigned characterization of service, reason for separation, and reentry code remain appropriate.

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. The Board noted he admitted to committing the misconduct which formed the basis for his administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to Petitioner's administrative separation and no error exists with his record.

The Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, Petitioner's desire for an upgrade to his characterization of service, his contentions, the totality of his service, his need for veterans' benefits, the non-violent nature of his misconduct, the negative effect his discharge has had on his life, his rehabilitation efforts, his post-service record of accomplishments, his candor and remorse, the harshness of his punishment, the evidence he provided in support of his application including the character references he provided for review, and the passage of time since his discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of Petitioner's misconduct far outweighed all of the mitigating factors combined. In particular, the Board determined that characterization under other than conditions 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 found that Petitioner not only admitted to having an inappropriate relationship with a junior female Marine but repeatedly attempted to avoid responsibility for his actions. The Board found that Petitioner's actions constituted a profound breach of Marine Corps core values that fully merited his separation with an OTH characterization of service. The Board also found that Petitioner did not have a minor lapse in judgment but committed a deliberate act that was corrosive to his command's good order and discipline, and compounded it with his attempts to subvert the investigation. Petitioner's trusted status as a senior non-commissioned officer in charge of leading young Marines was an especially aggravating factor to the Board. Therefore, even taking into consideration all the

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]

XXX XX [REDACTED] USMC

mitigation factors in your case, the Board found that Petitioner's misconduct while on active duty outweighed the mitigation evidence offered. While the Board commends Petitioner's post-service rehabilitation and acknowledged he likely endured personal difficulties as a result of his infidelity, ultimately, the Board concluded an upgrade of Petitioner's discharge characterization of service is not warranted in the interests of justice. Based on the same rationale, the Board determined Petitioner's reason for separation, separation authority, and reentry code remain appropriate.

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

RECOMMENDATION:

That Petitioner be issued a Correction to Certificate of Release or Discharge from Active Duty (DD Form 215), for the period ending 9 September 2008, to reflect the following comment added to the Block 18 Remarks section:

"CONTINUOUS HONORABLE SERVICE FROM 24MAR1998 TO 26JUN2006."

That no further changes be made to Petitioner's record.

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.

4/15/2026

