



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

██████████
Docket No. 8883-25
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 either to "Honorable" or to "General (Under Honorable Conditions)" and that his narrative reason for separation be changed to reflect "Secretarial Authority" or a less derogatory narrative. Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 15 May 2026 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 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 on 8 May 2007.

d. From 24 September 2007 through 25 October 2007, Petitioner absented himself without authority from his occupational school.

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e. On 1 November 2007, Petitioner was convicted by Summary Court-Martial (SCM) for violating Article 86, Uniform Code of Military Justice (UCMJ), due to his unauthorized absence (UA). He was sentenced to 30 days of confinement and a one-time forfeiture of \$867.

f. On or about 17 February 2008, an incident occurred wherein Petitioner had knowledge that a fellow Marine was abusing cocaine. Petitioner failed to notify his chain of command of his knowledge of the offense and knowingly allowed the Marine to bring cocaine onto the base. Petitioner was issued administrative counseling regarding his shortfalls in judgment and integrity.

g. On 19 June 2008, Petitioner accepted nonjudicial punishment (NJP) and was found guilty for violating Article 112a, Uniform Code of Military Justice (UCMJ), due to the wrongful introduction of cocaine onto the installation.

h. From 3 July 2008 through 30 November 2008, Petitioner again absented himself without authority, which was terminated by his apprehension. As a result, on 31 December 2008, he received a second SCM conviction for another Article 86, UCMJ, violation. He was sentenced to 30 days confinement with forfeiture of two-thirds pay for one month. Additionally, he was notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and due to drug abuse.

i. On 2 March 2009, Commanding General, [REDACTED], approved Petitioner's discharge under Other Than Honorable (OTH) conditions for the primary basis of misconduct due to drug abuse. Petitioner was so discharged on 6 March 2009.

j. Petitioner contends that he did not commit the misconduct offense of drug abuses. He relates that a Marine in his vehicle was in possession of cocaine which he did not use or have knowledge of. Today, he is respected by all those who know him and still implements the lessons and leadership he learned as a Marine. He further alleges that he did not understand the separation process and would not have waived his right to an administrative hearing if he had consulted a lawyer. In support of his application, in addition to his legal counsel's brief, he submitted a personal statement, six character letters, and professional documents.

CONCLUSION:

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

The Board initially concluded Petitioner was appropriately processed for administrative separation based on his record of misconduct. While the Board noted Petitioner's denials, it found that Petitioner chose to accept nonjudicial punishment rather than demand trial by court-martial. Although the Board found it credible that Petitioner did not himself use cocaine, the Board noted that misprision of a serious offense violates U.S. Navy Regulations and falls short of the conduct and integrity expected of a Marine. Regarding Petitioner's contention that he would not have waived his right to a hearing had he consulted a defense lawyer, the Board noted

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that Petitioner voluntarily chose to waive his right to consult legal counsel at no cost to himself despite being advised of that right. Regardless, the Board considered it largely inconsequential that Petitioner did not consult counsel or that he waived his right to a hearing before an administrative separation board. Given the nature of the incident, the Board concluded that it was improbable that Petitioner would have received a more favorable outcome had he requested a hearing before an administrative board. Likewise, although the Board observed that a more appropriate charge might have been misprision of a drug-related offense as opposed to wrongful introduction, the Board also found it unlikely that such distinction would have altered the ultimate outcome of his characterization of discharge. However, the Board noted that the evidence of record fails to substantiate the Petitioner personally use, possessed, or distributed cocaine, regardless that he either knowing or unknowingly participated in its introduction aboard the installation. In the absence of evidence to substantiate that Petitioner lacked knowledge of the introduction, the Board found that Petitioner's narrative reason for separation, specifically misconduct due to drug abuse, mischaracterizes the nature of his misconduct and unjustly labels him as a drug user or abuser. Accordingly, the Board determined that it is in the interest of justice to remove the reference to drug abuse from his discharge and, relying solely on the secondary basis for which his separation was approved, i.e. misconduct due to commission of a serious offense, and change his reason for separation to reflect "Misconduct – Commission of a Serious Offense" with associated changes to his reentry code, separation authority, and separation code.

Notwithstanding the Board's determination that an error exists with his reason for separation, it found no error with Petitioner's assigned OTH discharge characterization of service. The Board noted Petitioner did not deny committing the other misconduct that formed the basis for his administrative separation and OTH discharge. Therefore, the Board found no error with his OTH discharge.

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 and change to his reason for separation, Petitioner's contentions, the totality of Petitioner's service to include service highlights, Petitioner's need for veterans' benefits, the non-violent nature of Petitioner's misconduct, Petitioner's relative youth and immaturity at the time of his misconduct, the negative effect Petitioner's discharge has had on his life, Petitioner's rehabilitation efforts, Petitioner's post-service record of accomplishments, Petitioner's service to his community, the evidence Petitioner provided in support of his application, the character references Petitioner provided for review, and the passage of time since Petitioner's 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 found that Petitioner's conduct showed a complete disregard for military authority and regulations. The Board observed Petitioner was given multiple opportunities to correct his conduct deficiencies but chose to continue to commit misconduct, which led to Petitioner's OTH discharge. Petitioner's conduct

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not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of his command. Therefore, even taking into consideration all the mitigation factors in Petitioner's case, the Board found that his misconduct while on active duty outweighed the mitigation evidence offered. While the Board commended Petitioner for his post-service accomplishments, 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 found that Petitioner's reason for separation should continue to document misconduct as the basis for his separation.

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

RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) indicating that, for the period ending on 6 March 2009, he was discharged under the authority of "MARCORSEPMAN par 6210.5," with a narrative reason of "Misconduct – Serious Offense," separation code of "HKQ," and reentry code of "RE-4." That all other information currently listed on Petitioner's DD Form 214 remains the same.

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.

6/10/2026

