



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BAN  
Docket No: 10243-08  
7 October 2009

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

Subj: REVIEW OF NAVAL OF RECORD EX- [REDACTED]

Ref: (a) 10 U.S.C. 1552

- Encl: (1) DD Form 149 dtd 9 Oct 08 with attachments  
(2) Naval Hospital Twentynine Palms, Mental Health Department Evaluation ltr dtd 19 Apr 00  
(3) DD Form 214  
(4) Corrected Version of DD Form 214  
(5) Naval Discharge Review Board ltr dtd 8 May 08  
(6) HQMC MMSR3 memo dtd 8 Dec 08  
(7) HQMC MMER/RE memo dtd 3 Apr 09

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps, filed enclosure (1) with this Board requesting that his reenlistment code of RE-3P, his reason for separation, and his general discharge characterization be changed. Additionally, Petitioner, by implication, is requesting the removal of his nonjudicial punishment (NJP) dtd 11 August 2000.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 September 2009 and, pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

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 it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 25 September 1999. In early April 2000, after Marine Corps basic training, Petitioner was given two weeks of temporary additional duty (TAD) for "Hometown

Recruiting." He successfully completed his TAD and received a letter of commendation for his outstanding performance by recruiting two individuals into the Marine Corps.

d. On 16 April 2000, upon completion of his TAD, he missed the last shuttle van back to his parent command, Twentynine Palms, California. A man came up to him and offered him a ride back to the base. Since the man stated that he was going to Twentynine Palms himself; Petitioner accepted. Petitioner states that the man did not appear untrustworthy at the time, looked clean cut, and he stated that he felt if anything did happen, he would be able to protect himself. Petitioner claims that while on his way back to base, the man asked if they could stop briefly at his apartment to pick something up. He then invited Petitioner into his apartment. While there, the man offered him something to drink. Petitioner claims that the next thing he remembers was waking up naked on the living room couch of the man's apartment. At this point, Petitioner states he was "freaked out" and did not know what had happened. He got dressed, left the apartment and walked along the street until he found a cab and was able to get to the base in the early morning on 17 April 2000, (Petitioner was to return from leave on the morning of 17 April 2000). Soon after arriving at work, Petitioner told one of his supervisors about the possibility of an assault and said he wanted to get a check-up (enclosure (1)).

e. Petitioner's command contacted the Criminal Investigation Division and Family Advocacy. He was then taken to the base hospital for a sexual assault evaluation. However, Petitioner refused a full assessment from a rape kit. He states he was extremely upset over the large number of people that had gotten involved and the chain of events that was occurring. Petitioner says that he felt that everyone in his command knew what was going on and he felt frustrated and upset by the way he was being treated.

f. Petitioner states that he was later seen by a physician from his battalion, who then recommended an urgent mental health evaluation. Petitioner claims he just wanted to talk to someone so he was willing to see a psychiatrist. However, he claims he was not told that there was a potential result of being separated from the Marine Corps. Petitioner states that after a 45 minute evaluation from the psychiatrist, he still had no idea that he had received a diagnosis of a personality disorder and was being recommended for administrative separation (enclosure (2)). At this point, he felt betrayed by his command and he could not trust anyone. Furthermore, Petitioner states there were several Marines that were making fun of him and making sexual comments. Petitioner states he received many taunts and also perceived some of the comments as threats. He states that he felt extremely isolated and became more distressed and concerned for his safety. At this point, Petitioner entered an unauthorized absence

(UA) status.

g. While UA, Petitioner claims he called his command from his parents' home and was able to maintain contact until he finally returned, 57 days later. As a result of his UA, on 11 August 2000, Petitioner received NJP and was recommended for separation due to his personality disorder. Therefore, he was separated on 15 September 2000 with a general discharge and an RE-4 reenlistment code due to his misconduct and diagnosis of a personality disorder (enclosure (3)).

h. On 21 June 2007, Petitioner submitted a request to the Naval Discharge Review Board (NDRB) for a change to his characterization of discharge from general to honorable, his reenlistment code, and his narrative reason for separation. On 24 March 2008, NDRB considered Petitioner's case and granted partial relief. NDRB changed Petitioner's narrative reason for separation from personality disorder to "Secretarial Authority". Headquarters Marine Corps (HQMC) changed his reenlistment code from RE-4 to RE-3P (enclosure (4)). However, his characterization of discharge was unchanged due to his misconduct (enclosure (5)).

i. On 21 October 2008, Petitioner submitted a request to this Board to change his characterization of discharge from general to honorable, his RE-3P reenlistment code to RE-1A, and remove his NJP.

j. In advisory opinions found at enclosures (6) and (7), HQMC recommended that Petitioner's request be denied based on their reasoning that although NDRB changed his reason for separation from personality disorder to "Secretarial Authority", it did not change the fact that he was administratively discharged due to a personality disorder. Additionally, HQMC noted that Petitioner's record indicated that he received a service proficiency mark average of 3.2 and conduct mark average of 2.4. Therefore, he did not have the service proficiency mark average of 3.0 or higher and conduct mark average of 4.0 or higher to rate an honorable discharge.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action.

The Board considers the advisory opinions found at enclosures (5) and (6), and in light of the fact that NDRB already changed the narrative reason from personality disorder to "Secretarial Authority," it reasons that further relief is warranted by changing the RE-3P reenlistment code to RE-1. The Board believes that that there were extenuating circumstances that should have mitigated his UA. However, the Board also feels that Petitioner could have exercised better judgment in dealing with his situation than going UA. Therefore, the

Board finds that his NJP should remain in his record and his request for a characterization upgrade is denied based on his UA of 57 days. In view of the above, the Board recommends the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the RE-3P reenlistment code, assigned on 15 September 2000, to RE-1.

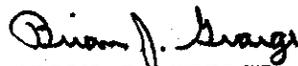
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purposes, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's request be denied.

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.

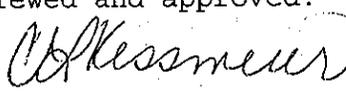
ROBERT D. ZSALMAN  
Recorder

  
BRIAN J. GEORGE  
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

 11/4/09