



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

[REDACTED]
Docket No: 3206-16
DEC 07 2017

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

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

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) HQMC/JPL ltr dtd 27 Feb 17

1. Pursuant to the provisions of reference (a), Petitioner, a former Marine, filed enclosure (1) with this Board requesting that his involuntary administrative separation be set aside so he can be returned to active duty. In the alternative, Petitioner requested his administrative separation due to misconduct be set aside and he be processed for separation in the best interest of the service with an honorable discharge. Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 September 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies. The Board also considered the advisory opinion provided by Headquarters Marine Corps (JPL) dated 27 February 2017, a copy of which was emailed to Petitioner's counsel on 12 August 2017. Enclosure (3) applies.

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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps Delayed Entry Program (DEP) on 1 June 2009 and began a period of active duty on 14 December 2009. He reenlisted on 25 October 2013 for 4 years with an End of Active Service (EAS) of 24 October 2017.

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d. On 22 July 2015, Petitioner's commanding officer (CO) ordered him to have no contact with female junior enlisted Marines unless under the close supervision of a staff noncommissioned officer during reasonable hours. On 24 July 2015, the CO directed a preliminary inquiry (PI) into Petitioner's conduct, and based on the results of the PI, the CO directed the PI Officer to conduct a command investigation (CI). The investigating officer (IO) concluded Petitioner had fraternized with several female junior enlisted Marines and had willfully violated the CO's no-contact order. Although the IO recommended nonjudicial punishment (NJP), Petitioner's record does not reflect NJP was administered.

e. Instead, on 21 October 2015, Petitioner received a 6105 Page 11 entry counseling him for inappropriate conduct and comments toward females Marines, both junior and senior to him in rank. Petitioner received a second 6105 Page 11 entry, on the same date, counseling him for violating the no-contact order on 28 August 2015 by telephoning the female junior enlisted Marine. Petitioner submitted a rebuttal statement to the second counseling on 27 October 2015 and denied violating the order. On 6 November 2015, Petitioner received another 6105 Page 11 entry counseling him for commission of a serious offense and pattern of misconduct.

f. According to Petitioner, he received an undated, unsigned Notification of Administrative Separation Proceedings sometime in early November 2015 advising him that he was being recommended for administrative separation with a general, under honorable conditions (GEN), characterization of service for misconduct due to commission of a serious offense and for a pattern of misconduct. He acknowledged receipt and elected to exercise his right to request a hearing before an administrative separation board.

g. Petitioner receive another Notification of Separation Proceedings dated 17 November 2015, signed by his CO, and advising him that he was being recommended for administrative separation with a GEN characterization of service for misconduct due to commission of a serious offense and pattern of misconduct. This notification did not advise Petitioner he had a right to request a hearing before an administrative separation board.

h. On 20 November 2015, Petitioner's CO recommended he be administratively separated with a GEN characterization of service by reason of commission of a serious offense and pattern of misconduct. On 4 December 2015, the separation authority approved this recommendation and directed Petitioner be separated with a GEN characterization of service by reason of commission of a serious offense and pattern of misconduct. The Petitioner was discharged on 13 December 2015.

i. At the time of his notification on 19 November 2015, Petitioner had over six years of total active and inactive service because his time in the DEP constituted inactive service for purposes of his right to a hearing before an administrative separation board. Because he was not properly notified of his right to elect a hearing before an administrative separation board and was separated without affording him the opportunity to elect such a hearing, Petitioner's administrative discharge constitutes a probable material error or injustice. See Enclosure (3).

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j. Even if Petitioner had been properly afforded his right to a hearing before an administrative separation board, his separation was improperly based, in part, upon a pattern of misconduct that was legally and factually insufficient, and thus constitutes a probable material error or injustice. See Enclosure (3).

k. The preponderance of the evidence adduced during the CI supported the conclusion that Petitioner had violated the CO's no-contact order by telephoning a junior female Marine. The basis of misconduct due to commission of a serious offense is legally and factually sufficient. See Enclosure (3).

l. Petitioner's End of Active Service (EAS) date was 24 October 2017.

CONCLUSION:

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

The Board concludes Petitioner was improperly denied his right to a hearing before an administrative separation board and because his separation was improperly based, in part, upon a pattern of misconduct that was legally and factually insufficient, his separation constitutes a probable material error or injustice warranting relief.

Because the basis of misconduct due to commission of a serious offense is legally and factually sufficient, however, the Board concludes such relief does not warrant reinstatement or an honorable characterization of service.

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

RECOMMENDATION:

Petitioner's naval record be corrected to show that on his EAS, 24 October 2017, Petitioner was discharged with a general, under honorable conditions, characterization of service, his narrative reason for separation was "secretarial authority," the separation authority was "MILPERSMAN 1910-164," and his separation code was "JFF".

Petitioner shall be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214).

Petitioner shall be paid all back pay and allowances from 14 December 2015 to his EAS of 24 October 2017.

Petitioner's naval record be further corrected by removing his 6105 Page 11 counseling dated 6 November 2015 and all documents associated with Petitioner's administrative separation

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proceedings.

A copy of this report of proceedings shall be filed in Petitioner's naval record.

Upon request, the Department of Veterans Affairs shall be informed that Petitioner's application was received by the Board on 13 April 2016.

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.

[REDACTED]

Recorder

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.

[REDACTED]

Executive Director