



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

[REDACTED]
Docket No: 8415-16
12 Sep 17

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

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

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149
(2) Case summary
(3) Service Record (Excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting correction to his Certificate of Release or Discharge from Active Duty (DD Form 214), to include an upgrade to his other than honorable (OTH) discharge to an honorable (HON) characterization of service. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 June 2016, and pursuant to its regulations, determined, by a split vote of 2 to 1, that the partial corrective action indicated below should be taken on the available evidence of record.

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 interest of justice to review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 1 January 1998. On 11 June 1999, Petitioner was counseled for violating an order or regulation by leaving the scene of an accident while driving a bus. Petitioner served without further disciplinary incident for nearly a year. On 17 April 2000, he was counseled for being absent without authorization (UA). His DD Form 214 indicates that his misconduct continued with several periods of UA between the time of the April 2000 counseling until his discharge on 26 October

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2001. His DD Form 214 reflects that he was UA for a total of 47 days (from 5-10 September 2000, 28 February-1 March 2001, 6 September - 9 October 2001, and 12-16 October 2001).

d. On 7 February 2000, approximately two months before Petitioner's first disciplinary action for UA, Petitioner suffered two family tragedies. First, Petitioner's mother was infected with Hepatitis C when she was accidentally stuck by a needle while working as a nurse. Second, about a week after his mother's infection with Hepatitis C, Petitioner's 18-year old sister and his 14-year old niece were involved in a fatal vehicle accident.

e. Following the onset of his mother's health issues and the loss of his sister and his niece, Petitioner's performance in the Marine Corps declined. Petitioner's record reflects that between 26 September 2000, and 30 August 2001, he was subject to four nonjudicial punishments (NJPs) for infractions of UA and breaking restriction and a third counseling for a pattern of misconduct.

f. Petitioner began a period of UA on 6 September 2001. He surrendered himself to military control on 11 October 2001 and was admitted to Naval Hospital, [REDACTED] for a psychiatric mental health consultation following suicidal ideations. On 12 October 2001, Petitioner received a confinement physical and was referred for follow up care with a clinical psychologist. The psychologist's notes indicate that Petitioner's suicidal ideations and depressed mood had resolved.

g. On 16 October 2001, charges for the period of UA from 6 September 2001 through 10 October 2001, were preferred against Petitioner. Petitioner submitted a request for an OTH administrative discharge in lieu of trial by court martial. On 26 October 2001, Petitioner was discharged from the Marine Corps with OTH characterization of service.

h. The Board considered Petitioner's service record, including his 3.8/3.8 proficiency and conduct markings for his period of active duty service. The Board also reviewed the timing and frequency of Petitioner's misconduct, and noted the marked escalation of disciplinary incidents following the loss of his sister and niece.

i. The Board, in its review of Petitioner's entire record and application, carefully weighed all potentially mitigating factors, such as the personal loss to Petitioner during his active duty service, his medically documented struggles with depression and suicidal ideations, and his performance markings for his overall military service. The Board also noted that Petitioner's chain of command counseled Petitioner on more than one occasion about his misconduct following his personal tragedies, and continued to hold Petitioner accountable through NJPs, but still afford Petitioner the opportunity to perform up to expected standards.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board concludes that Petitioner's request warrants partial favorable action in the form of an upgrade to his discharge characterization from OTH to general (under honorable conditions).

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The majority noted that Petitioner's significant misconduct began after the loss of his sister and niece, and that his medical records indicate that he struggled with their deaths. The majority also noted the letter from Petitioner's mother described the circumstances of Petitioner's military service from her perspective; the majority found the letter compelling in its description of the challenges that Petitioner faced following the deaths of his sister and niece. The majority also weighed Petitioner's voluntary surrender from his last period of UA, and his proficiency and conduct markings. The majority determined that Petitioner's OTH discharge was not issued in error, but that it should be upgrade to a GEN discharge to correct an injustice.

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

MAJORITY RECOMMENDATION:

That Petitioner be issued a new Certificate of Release or Discharge from Active Duty (DD Form 214) reflecting an upgrade to general (under honorable conditions) character of service.

That a copy of this Report of Proceedings be filed in Petitioner's naval record.

That no further relief be granted.

That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 22 September 2016.

MINORITY CONCLUSION:

The minority disagrees with the majority and concludes that Petitioner's request does not warrant favorable action.

The minority member considered Petitioner's overall record of misconduct, which included the four NJPs and three counselings. The minority member noted that although Petitioner suffered tremendous personal loss, he was still expected to comply with the requirements of military service, including reporting to duty when expected and following orders. The minority member noted although Petitioner suffered from depression, he nonetheless absented himself from his military duties without authorization and therefore failed to meet the expected performance of a Marine.

In view of the above, the minority finds no error or injustice warranting corrective action.

MINORITY RECOMMENDATION:

That Petitioner's request be denied.

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

[REDACTED]

Executive Director

Reviewed and Approved the Board Majority Recommendation – Partial Relief

~~Reviewed and Approved the Board Minority Recommendation – Deny Relief~~

[REDACTED]

10/24/2017
Date