



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

█
Docket No: 8266-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USMC, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo, "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment," 25 August 2017
(c) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) DD Form 214
(3) NAVMC 118(13), Record of Conviction by Court-Martial
(4) NAVMC 118(13), Record of Conviction by Court-Martial
(5) *United States v. [Petitioner]*, in the U.S. Navy-Marine Corps Court of Criminal Appeals, █
(6) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 22 June 2021
(7) █ Clinic Notes, 29 July 2009

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 characterization of service be upgraded to general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 6 August 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (b) and (c).

3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or 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.

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

b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and review Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 6 November 1995. See enclosure (2).

d. On 29 August 1996, Petitioner was convicted by a summary court-martial for an unauthorized absence (UA) from 25 June 1996 to 23 July 1996 in violation of Article 86, Uniform Code of Military Justice (UCMJ). He was sentenced to be confined for 30 days, reduced to the grade of E-1, and to forfeit \$582 pay per month for one month.¹ See enclosure (3).

e. On 24 February 1997, Petitioner was convicted by a special court-martial (SPCM) for UA from 22 October 1996 to 13 January 1997 in violation of Article 86, UCMJ. He was sentenced to be confined for 50 days and a bad conduct discharge (BCD).² See enclosure (4).

f. On 25 March 1999, the Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence of Petitioner's SPCM. See enclosure (5).

g. On 31 January 2000, Petitioner's adjudged BCD was executed. See enclosure (2).

h. Petitioner contends that he was "just a dumb kid" at the time of his misconduct and that he "didn't realize the full consequences of [his] actions." He further contends he is still a very proud Marine, and has served his community as a volunteer firefighter, a Boy Scout leader, and through the Freemason and Shiners organizations. Petitioner also provided several letters attesting to his character, work ethic, volunteer activities, and contributions to his community. See enclosure (1).

i. Petitioner indicated in Block 13 of enclosure (1) that "Other Mental Health" condition(s) were related to his request for relief. He did not, however, provide further explanation to describe any in-service trauma, psychological symptoms, occupational impairment, or linkage between his misconduct and a mental health condition. See enclosure (1) and (6). Petitioner was diagnosed with depression in 2009, but there was no information included with the evidence of this diagnosis regarding how he met the criteria for depression, the clinical course of his condition, when the symptoms began, or any relationship or linkage to his military service. See enclosure (7).

j. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. In addition to making the observations discussed in paragraph 3i above, the AO noted that Petitioner's in-service records contained no evidence of a diagnosis with a mental health condition. The AO concluded that the preponderance of objective evidence failed to establish that Petitioner was

¹ On 30 August 1996, the convening authority suspended execution of that portion of Petitioner's adjudged forfeiture exceeding \$382 pay per month for six months.

² The sentence to confinement was deferred in accordance with a pretrial agreement.

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

diagnosed with or suffered from a mental health condition at the time of his military service, or that his in-service misconduct could be mitigated by a mental health condition. See enclosure (6).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner warrants clemency in the interests of justice.

The Majority found no error or injustice in the circumstances of Petitioner's SPCM conviction, or in his adjudged BCD. An UA of 83 days, which had been preceded by a SCM conviction for a UA of 29 days, provided more than a sufficient justification for Petitioner's adjudged BCD.

Because Petitioner indicated that a mental health condition was related to his request for relief, his application was reviewed in accordance with the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's contention that a mental health condition was related to his request for relief, and the effect that such a condition may have had upon the misconduct for which he was discharged. Even applying liberal consideration, however, the Majority found no evidence that Petitioner was suffering from a mental health condition at the time of his service in the Marine Corps or that his misconduct could be mitigated by such a condition. In this regard, the Majority noted that, although Petitioner indicated in Block 13 of enclosure (1) that his request for relief was related to a mental health condition, he made no such claim or assertion in the narrative of his request.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and any effect that it may have had upon his misconduct in accordance with reference (b), the Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Majority considered, among other factors, Petitioner's contrition for his misconduct; the evidence that Petitioner clearly matured after his discharge to become a productive member of society and a valuable member of his community; Petitioner's extensive post-service volunteer work as a [REDACTED] and [REDACTED] as well as his service to the community through the [REDACTED] and [REDACTED] organizations; the numerous letters provided by Petitioner attesting to his character, work ethic, volunteer work, and contributions to his community; Petitioner's continuing pride and dedication to the Marine Corps; the relatively minor and non-violent nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct, and the passage of time since Petitioner's discharge. Based upon the totality of the circumstances, the Majority determined that Petitioner's clear rehabilitation and extensive post-service record of accomplishment and service to his community is deserving of recognition in the form of clemency. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions). Although not specifically requested by the Petitioner, the Majority also determined that his narrative reason for separation, separation authority, and separation code should be changed in the interests of justice to relieve Petitioner of the stigma associated with the circumstances of his discharge from the Marine Corps.

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

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN 6214"; and that his separation code was "JFF1."

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

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

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice to warrant relief.

The Minority agreed with the Majority conclusion that there was no error or injustice associated with Petitioner's SPCM conviction or the BCD that it adjudged. The Minority also applied liberal consideration to Petitioner's claimed mental health condition and the effect that it may have had upon his misconduct, and concurred with the Majority that there was no evidence that Petitioner suffered from such a condition while in the Marine Corps or that a mental health condition may have mitigated his misconduct.

The Minority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (c), but disagreed with the Majority conclusion in this regard. While the Minority noted Petitioner's significant post-service contributions to his community and clear rehabilitation, it did not believe that these factors were sufficient to justify clemency in this case. Specifically, the Minority noted that Petitioner's SPCM conviction for UA was not an isolated incident; he was previously convicted by a SCM for a nearly month-long UA, and did not learn the lesson intended by 30 days of confinement. The Minority also noted that Petitioner escaped the 50 day sentence to confinement adjudged by the SPCM for his second UA along with his BCD. Given these circumstances, and the negative impact that Petitioner's repeated absences likely had upon unit readiness and his fellow Marines, the Minority found that Petitioner's misconduct far outweighed his post-service record of accomplishment and service, and that clemency was therefore not warranted in the interests of justice.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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

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

9/14/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Upgrade to General (under honorable conditions);
Change Narrative Reason for Separation to "Secretarial Authority")

~~MINORITY Recommendation Approved (Deny Relief)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]