



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

██████████
Docket No: 2716-21
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) 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 w/attachments
(2) ██████████ CO Memo 1320/2 TRIRR, subj: Transfer to the Individual Ready Reserve (IRR) Orders, 12 Jul 00
(3) NAVMC 763, United States Marine Corps Appointment Acceptance and Record
(4) NAVMC 10418-1, Application for Officer Programs, 1 June 2003
(5) DD Form 2707, Confinement Order, 24 Sep 12
(6) ██████████ General Court-Martial Order 01-2013, 8 Feb 13
(7) ASN (M&RA) Memo, subj: Dismissal from the United States Naval Service, 30 Sep 13
(8) DD Form 214

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 dismissal from the Marine Corps be removed from his record and that his naval record be corrected to reflect his honorable discharge upon completion of his six years of enlisted service in the U.S. Marine Corps Reserve (USMCR) prior to his appointment as an officer.

2. The Board reviewed Petitioner's allegations of error or injustice on 12 May 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 records, and 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 or injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

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- b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to review Petitioner's application on its merits.
- c. Petitioner served as an enlisted Marine in the USCMR from 29 July 1994 to 28 July 2002, rising to the rank of Corporal.¹ See enclosure (3).
- d. On 1 June 2003, Petitioner requested an appointment as a second lieutenant in the Marine Corps, to be effective 12 December 2003. See enclosure (4).
- e. After completing officer candidate school (OCS), Petitioner was appointed as a second lieutenant in the USMCR on 12 December 2003. See enclosure (3).
- f. On 24 September 2012, Petitioner was placed in pre-trial confinement court-martial upon the discovery of evidence that he was engaged in an adulterous relationship with the wife of a senior enlisted Marine. See enclosure (5).
- g. On 16 November 2012, Petitioner was convicted by a general court-martial (GCM), pursuant to his pleas, of one specification of violating a lawful written order to refrain from initiating contact and communication with the wife of a senior enlisted Marine in violation of Article 92, Uniform Code of Military Justice (UCMJ); and two specifications of conduct unbecoming an officer and a gentleman by wrongfully engaging in sexual intercourse and maintaining a romantic relationship with the same woman and deleting evidence of this romantic relationship from the woman's phone to avoid discovery by either her husband or military authorities.² He was sentenced to dismissal from the Marine Corps. See enclosure (6).
- h. On 8 February 2013, the convening authority approved Petitioner's sentence as adjudged. See enclosure (6).
- i. By memorandum dated 30 September 2013, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) formally dismissed Petitioner from the Marine Corps upon completion of the appellate process. See enclosure (7).
- j. On 7 November 2013, Petitioner was discharged from the Marine Corps pursuant to his adjudged dismissal. See enclosure (8).
- k. Petitioner contends that his court-martial and dismissal from the Marine Corps was not proper or equitable. He explains in his application that his career in the Marine Corps took a heavy toll on his first marriage, resulting in a mutual decision with his first spouse to begin divorce proceedings. During his separation from his first wife pending their divorce, he began

¹ Petitioner was transferred to the Individual Ready Reserve effective 29 July 2000. See enclosure (2).

² Following Petitioner's plea of guilty to these charges, the Military Judge granted a Government motion to withdraw and dismiss a number of other charges, including two specifications of adultery, one with the same woman and the other with a Marine officer, in violation of Article 134, UCMJ; communicating indecent language to the senior enlisted Marine's wife in violation of Article 134, UCMJ; and obstructing justice by endeavoring to impede an investigation by deleting evidence of his romantic relationship with the same woman (this conduct was incorporated into one of the charges for which Petitioner pleaded guilty by exceptions and substitutions).

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his relationship with another woman who was also pending a divorce from her husband, who was a gunnery sergeant in the Marine Corps and, according to Petitioner, an abusive husband. This relationship was the subject of Petitioner's court-martial charges. He asserts that this woman had previously been in a romantic relationship with another married officer within the command who was "best friends" with the commanding officer, and that his own relationship with the woman started after that relationship ended. Petitioner contends that his now-former, then-estranged spouse knew of this relationship, and was supportive of it. The woman's husband, however, was not, and threatened to report the relationship to the command to harm Petitioner's career. This situation created a significant amount of stress for the woman, and resulted in her being hospitalized for in-patient mental health treatment. During her hospitalization, her husband discovered evidence of her previous relationship with the other officer, and presented the evidence to the command to pursue charges against both the Petitioner and the other officer. Petitioner then spent almost 60 days in pretrial confinement pending court-martial for adultery and conduct unbecoming an officer and a gentleman, while the other officer was reportedly discharged with a general (under honorable conditions) characterization of service. Since his discharge, Petitioner has overcome the stigma of his dismissal to pursue a successful career in the aviation industry. He has been married to the woman with whom he developed the illicit relationship for eight years and they have two children together, and she is now very good friends with his former wife. Petitioner contends that the disparate treatment between himself and the other officer who had also engaged in an adulterous relationship with the same woman was the result of the other officer's friendly relationship with their commanding officer. In addition to his assertion that his court-martial and dismissal was not proper or equitable given his disparate treatment relative to the other officer, Petitioner also contends that the Marine Corps erroneously combined his enlisted service in the USMCR with his service as an officer on his DD Form 214 when he was dismissed from the Marine Corps, so he never received the honorable discharge from the USMCR for his six years of enlisted service prior to his appointment as an officer that he was due.

CONCLUSION:

After careful review and consideration of all of the evidence of record, the Board found no error or injustice in Petitioner's court-martial and dismissal from the Marine Corps that warrants relief.

The Board found no error or injustice in Petitioner's court-martial or dismissal for violating a lawful order and conduct unbecoming an officer and a gentleman. The evidence reflects that Petitioner pled guilty to these offenses at his general court-martial, and that the appellate process has upheld the findings and sentence. The Board found that the sentence adjudged was reasonable under the circumstances and appropriate for the offenses for which Petitioner was convicted.

The Board found Petitioner's contention that his court-martial and dismissal from the Marine Corps was inequitable given the disparate treatment that he received relative to the other officer who allegedly engaged in the same conduct to be without merit. First, the evidence reflects that Petitioner not only engaged in an adulterous relationship with the spouse of an enlisted Marine, but that in doing so he also violated a direct and written order to refrain from having any contact with the woman. This suggests that Petitioner was provided the opportunity to correct his

behavior before suffering any consequences, but refused to do so. Second, Petitioner was found guilty of attempting to destroy evidence for the purpose of preventing its discovery by military authorities. Although the obstruction of justice charge was withdrawn upon his plea of guilty to an amended specification that incorporated this conduct, such conduct certainly would distinguish Petitioner from the other officer who he alleges received more favorable treatment. Third, it is apparent that Petitioner's misconduct was far more detrimental to good order and discipline in the Marine Corps than was the other officer's alleged misconduct. Not only was Petitioner's conduct in violation of a direct order to refrain from having contact with the woman, but the evidence suggests that the woman's spouse was not even aware of the previous relationship until Petitioner's relationship with her resulted in his discovery of the evidence. It is apparent that Petitioner's misconduct destroyed not only his own career, but that of the woman's husband as well. Finally, the evidence reflects that Petitioner was originally charged with adulterous conduct with a fellow Marine officer in addition to the misconduct related to his adulterous relationship with the spouse of an enlisted Marine. While this adultery charge was withdrawn and dismissed following his arraignment on the charges for which he pleaded guilty, it certainly provides a viable explanation for the disparate disposition decisions made for each of the officers. This Board is not an investigative body, and it did not have access to any of the information relied upon in making the disposition decision regarding the other officer named by Petitioner. Based upon the evidence available, however, the Board was not convinced that the other officer was afforded favorable treatment due to his relationship with the commanding officer. The circumstances of the two cases have obvious differences that suggest Petitioner's misconduct was significantly more egregious.

In addition to reviewing the circumstances of Petitioner's court-martial and dismissal for error or injustice, the Board also considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (b). In this regard, the Board considered, among other factors, the entirety of Petitioner's career in the Marine Corps, including his apparently honorable enlisted service in the USMCR and his otherwise honorable and distinguished service as a Marine Corps aviator; Petitioner's contention that another officer received more favorable treatment for similar misconduct due to his friendly relationship with the commanding officer; that Petitioner spent almost 60 days in pretrial confinement prior to his GCM which did not sentence him to any confinement; the circumstances of Petitioner's adulterous relationship, to include the fact that both he and the woman were separated from their spouses pending divorce at the time of the relationship, that his own wife was supportive of the relationship, and that the woman's spouse was reportedly abusive; that Petitioner has since married the woman with whom he engaged in an adulterous relationship, and that they have raised a family together; the evidence provided that the aggrieved victim of Petitioner's misconduct apparently forgave him for engaging in an adulterous relationship with his wife and apologized for reporting it; that Petitioner has overcome the stigma attached to his dismissal to pursue a successful career in the aviation industry; Petitioner's reported involvement in his community and volunteer work; and the passage of time since Petitioner's misconduct and dismissal. Even considering these potentially mitigating factors, the Board did not believe that clemency was warranted under the totality of the circumstances. Petitioner's misconduct was much more egregious than a simple adulterous relationship between two consenting adults who were both separated from their spouses, as Petitioner describes it. He was a commissioned officer in the Marine Corps who actively

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pursued a relationship with the spouse of an enlisted Marine after being ordered to refrain from having any contact with the woman. Even if his marriage was essentially over at that point, it is apparent that Petitioner's misconduct had an adverse impact upon the enlisted Marine and good order and discipline within the Marine Corps. Petitioner clearly knew or should have known that his conduct was wrongful, and blatantly violated the trust afforded to him as a commissioned officer. The Board believes that the referral of such charges to a GCM was appropriate under the circumstances, and that the punishment imposed was reasonable and appropriate under the circumstances. Accordingly, the Board determined that clemency is not warranted.

The Board found no evidence to support Petitioner's contention that the Marine Corps erroneously combined his enlisted service in the USMCR with his service as a commissioned officer on his DD Form 214, thus depriving Petitioner of the honorable discharge he earned for his enlisted service. Enclosure (8) encompasses Petitioner's time on active duty from his attendance at OCS through his dismissal from the Marine Corps. It does not encompass his enlisted time in the USMCR prior to OCS. The Board did note, however, that Petitioner's total prior active service (i.e., his enlisted time in the USMCR) appears to be erroneously accounted for in block 12d of Petitioner's DD Form 214.³ Petitioner has not been deprived of the honorable discharge from the USMCR that he earned for his six years of enlisted service; he simply does not have documentation of it since a DD Form 214 is issued upon discharge from active duty. Petitioner may contact Headquarters, United States Marine Corps, Reserve Retirement and Separation Section (MMSR-5), 3280 Russell Road, Quantico, VA 22134-5103, to request documentation of his honorable discharge from the USMCR.

RECOMMENDATION:

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

That Headquarters, Marine Corps, conduct an audit of Box 12d of Petitioner's DD Form 214, and issue a DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty) if appropriate to reflect the proper calculation of Petitioner's total prior active service.

That Petitioner's request to change his characterization of service 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 titled matter.

³ Petitioner is credited with seven years, 10 months, and 22 days of total prior active service. This appears to credit Petitioner with active service for inactive periods. The Board makes no conclusions with regard to the accurate calculation of Petitioner's total prior active service.

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

6/3/2021

[REDACTED]

Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE
AFFAIRS) DECISION:

Board Recommendation Approved (Relief Denied; Forward to HQMC to Audit Prior Active Service)

Petitioner's Request Approved (Change Characterization of Service to Honorable)

Petitioner's Request Approved (Change Characterization of Service to General (under honorable conditions))

JUN 22 2021

[REDACTED]

Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)