



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

██████████  
Docket No: 3520-21  
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) DD Form 214 (ending 21 Aug 84)  
(3) DD Form 214 (ending 31 Jan 93)  
(4) DD Form 214 (ending 17 Jul 06)  
(5) Marine Forces Reserve General Court-Martial Convening Authority Action and Order Number ██████████  
(6) ASN (M&RA) Memo, subj: Dismissal from the United States Naval Service, 22 May 06  
(7) BCNR Letter Docket No: 4666-08, 5 Nov 09

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.

2. The Board reviewed Petitioner's allegations of error or injustice on 11 June 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 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.

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.

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c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 17 August 1981. See enclosure (2). He served honorably as an enlisted Marine until he was discharged on 31 January 1993 to accept an appointment as a warrant officer. See enclosure (3).

d. On 1 February 1993, Petitioner was appointed as a warrant officer. See enclosure (4).

e. On 10 December 1999, Petitioner was convicted by a general court-martial (GCM) of disobeying a superior commissioned officer by possessing and using alcoholic beverages while on a naval installation, in violation of Article 90, Uniform Code of Military Justice (UCMJ); violating a lawful general order by wrongfully engaging in a personal and sexually intimate relationship with an enlisted Marine and dereliction of duty by using and allowing another enlisted Marine to use Government property and resources for personal reasons,<sup>1</sup> both in violation of Article 92, UCMJ; maltreatment of the same enlisted Marine with whom he engaged in an inappropriate relationship by encouraging her to consume alcoholic beverages with knowledge that she was alcohol dependent and by encouraging her to engage in an adulterous relationship with him, in violation of Article 93, UCMJ; and making a false official statement regarding his relationship with the enlisted Marine, in violation of Article 107, UCMJ. On 13 July 2000, Petitioner was sentenced to be reprimanded, 60 days of restriction, a \$6,000 fine, and dismissal from the naval service.<sup>2</sup> See enclosure (5).

f. On 20 August 2000, the convening authority approved the sentence as adjudged, but suspended the restriction and the fine for a period of one year. See enclosure (5).

g. On 6 May 2005, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) affirmed the findings and the sentence as approved by the convening authority. See enclosure (6).

h. By memorandum dated 22 May 2005, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) ordered that Petitioner's dismissal be executed. See enclosure (6).

i. On 17 July 2006, Petitioner was dismissed from the Marine Corps. See enclosure (4).

j. On 16 October 2009, the Board denied Petitioner's previous request for relief in Docket No. 4666-08. See enclosure (7).

k. Petitioner requests that his characterization of service be upgraded so that he can continue working in the firearms industry, as he has since 1999. He asserts that he began working at a gun store in 1999, and that he eventually came to manage the store until it closed in 2007.<sup>3</sup> He then opened his own gun store in 2012. On 12 August 2020, his name was reportedly placed on the "Prohibited Persons" list in the National Instant Criminal Background Check System as a

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<sup>1</sup> Petitioner used his official time and that of a subordinate Marine to perform work on his own personally-owned vehicle and that of other members of the command.

<sup>2</sup> The sentence of a fine included the caveat that Petitioner was to be confined for 60 days if not paid when ordered executed.

<sup>3</sup> This period would coincide with Petitioner's voluntarily appellate leave after his court-martial conviction.

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result of his GCM conviction, which prevents him from conducting business in the firearms industry. In support of his request, Petitioner contends that he has been a good citizen and a productive member of society, and he worked hard at many different jobs after his dismissal from the Marine Corps to provide for his family. He also contends that he had no idea that his court-martial conviction would prevent him from working in the firearms industry, and that he never would have gotten into the firearms business if he knew that it could be taken away from him.

#### CONCLUSION:

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

The Board found no error or injustice in Petitioner's GCM conviction or in the sentence adjudged and executed. Petitioner plead guilty to the offenses against him, and the sentence adjudged and executed was proportional to the offenses of which he was convicted. Additionally, Petitioner received the benefit of his guilty plea, both in the sentence adjudged and in the convening authority's action on the sentence. Finally, Petitioner's GCM conviction and sentence was affirmed by the NMCCA.

The Board 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, Petitioner's contention that he has been a good citizen and a productive member of society; that he worked hard to provide for his family and reportedly built a successful business despite the stigma of his court-martial conviction and dismissal; the collateral consequences of Petitioner's conviction upon his career in the firearms industry; that Petitioner was unaware of the potential consequences of his conviction with regard to his ability to work in the firearms industry; the nature of the misconduct for which Petitioner was convicted; that Petitioner plead guilty to his offenses; his approximately 19 years of otherwise honorable service; and the passage of time since Petitioner's conviction and discharge. Based upon this review, the Board determined that relief was not warranted under the totality of the circumstances. In the absence of evidence of the post-service contributions to society that he asserted, the Board found that Petitioner's misconduct outweighed the potentially mitigating circumstances.

In making this determination, the Board noted that Petitioner's ability to work in the firearms industry would not be restored even if his characterization of service was upgraded. It is not Petitioner's GCM sentence of dismissal that renders him ineligible to work in this industry, but rather it is his felony conviction which carries this collateral consequence. In accordance with paragraph (f) of reference (a), the Board may only take action with regard to records of GCMs to reflect the actions taken by reviewing authorities under the UCMJ or to adjust the sentence for purposes of clemency. The Board does not have the ability to remove Petitioner's conviction, so any relief, even if warranted, would not produce the effect that Petitioner seeks.

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RECOMMENDATION:

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

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.

7/1/2021

[REDACTED]

Executive Director

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

Board Recommendation Approved (Deny Relief)

JUL 14 2021

Petitioner's Request Approved (Grant Relief – Upgrade to General (Under Honorable Conditions)/ Honorable)

[REDACTED]

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