



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

██████████
Docket No: 3562-21
Ref: Signature Date

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

Subj: REVIEW 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 with attachments
(2) DD Form 214
(3) NAVMC 118(12), Offenses and Punishments, 16 Nov 01
(4) ██████████ CO Memo (First endorsement on CO, ██████████
██████████ ltr 1910 LEGAL of 28 Jan 02), 1 Feb 02
(5) NAVMC 118(12), Offenses and Punishments, 29 May 02
(6) NAVMC 10132, Unit Punishment Book, 17 Sep 02
(7) ██████████ CO Memo, subj: Vacation of Suspended
Administrative Discharge ICO [Petitioner], 7 Oct 02
(8) ██████████ CO Memo (First Endorsement on enclosure (7)),
subj: Vacation of Suspended Discharge in the case of [Petitioner], 31 Oct 02

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 honorable or general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 23 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 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.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute limitation 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 June 2000. See enclosure (2).

d. On 16 November 2001, Petitioner received nonjudicial punishment (NJP) for wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice (UCMJ).¹ See enclosure (3).

e. On or about 1 February 2002, the separation authority approved Petitioner's discharge from the Marine Corps under other than honorable (OTH) conditions by reason of misconduct due to drug abuse.² Upon approval of this separation, the separation authority suspended its execution for a period of 12 months. See enclosure (4).

f. On 29 May 2002, Petitioner received his second NJP for absenting himself from his place of duty in violation of Article 86, UCMJ, and writing a bad check without sufficient funds in violation of Article 123a, UCMJ. See enclosure (5).

g. On 5 September 2002, Petitioner received his third NJP for absenting himself from his appointed place of duty in violation of Article 86, UCMJ. See enclosure (6).

h. By memorandum dated 7 October 2002, Petitioner's battalion commander requested that the separation authority vacate the suspension of Petitioner's administrative separation under OTH conditions that was approved on 1 February 2002 based upon his two subsequent NJPs. See enclosure (7).

i. On or about 31 October 2002, the separation authority vacated the suspension of Petitioner's previously approved separation, and directed his discharge under OTH conditions. See enclosure (8).

j. On 5 November 2002, Petitioner was discharged from the Marine Corps under OTH conditions by reason of misconduct. See enclosure (2).

k. Petitioner contends that relief is appropriate because he has worked to prove himself in every job that he has had since his discharge to show that his OTH discharge does not reflect the person that he is or the quality of his work. Since his discharge, he reportedly has worked as a mechanic at Pep Boys, then went into construction where he eventually advanced to be a foreman. Later, he worked as a bartender until he was hired as an armed guard for Homeland Security Solutions at the ██████████ in ██████████. When the ██████████ switched to Marine Corps police for security, he got his current job as the

¹ Petitioner tested positive for the use of Psilosin, a Schedule I controlled substance.

² Petitioner's records do not include documentation pertaining to the administrative separation under OTH conditions that was approved and suspended by the separation authority. The presumption of regularity applies to establish that the procedures were properly executed.

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Water and Wastewater operator for [REDACTED]. Petitioner claims to also own a side business as a contract water operator, and that he has moved through the ranks of the [REDACTED] Volunteer Fire Department until being voted as the new Fire Chief last year. Petitioner provided several letters of support from fellow Marines and his volunteer fire department chief, attesting to his character. See enclosure (1).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that relief is warranted in the interests of justice.

The Majority considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, Petitioner's long post-service record of employment and contributions to his community; the character references provided by the Marines who served with Petitioner and his volunteer fire department chief; the relatively minor nature of the misconduct for which Petitioner was discharged; Petitioner's relative youth and immaturity at the time of his misconduct, and the passage of time since Petitioner's discharge. Given the totality of the circumstances, the Majority determined that the mitigating circumstances outweighed the relatively minor misconduct for which Petitioner was discharged. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice.

The Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable, but determined that such relief was not warranted under the totality of the circumstances. In making this determination, the Majority found that the mitigating circumstances did not so significantly outweigh Petitioner's misconduct to warrant such extraordinary relief.

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 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 finds insufficient evidence of any error or injustice that warrants relief.

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The Minority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b), but reached a different conclusion than the Majority in this regard. While the Minority noted Petitioner's commendable post-service record of employment and contributions to his community, it also noted that Petitioner was provided an opportunity to avoid the natural consequences of his illegal drug use. His OTH discharge was suspended to give Petitioner a second chance to prove that he could be a good Marine, but he proved otherwise by receiving two more NJPs after being provided an opportunity not otherwise provided to many Marines in his situation. Accordingly, the Minority felt that Petitioner's misconduct far outweighed all of the mitigating circumstances, and that his OTH characterization of service was and remains appropriate under the totality of the circumstances.

MINORITY RECOMMENDATION:

In view of the above, the Minority of 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 entitled matter.
5. The foregoing action of the Board is submitted for your review and action.

7/13/2020

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approve (Upgrade to General (under honorable conditions))

~~MINORITY Recommendation (Deny Relief)~~

~~Petitioner's Request Approved (Upgrade to Honorable)~~

8/17/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]