



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

█
Docket No: 5142-21
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
(3) NAVMC 113(11), Administrative Remarks
(4) NAVMC 113(12), Offenses and Punishments
(5) SF 600, Chronological Record of Medical Care, 28 October 1991
(6) █ MCB Consolidated Substance Counseling Center Director Memo 5000 13, subj: Narrative Summary Level II Rehabilitation ICO [Petitioner], 18 December 1991
(7) NAVMC 118(13), Record of Conviction by Court-Martial
(8) Marine Corps Air Station █ Headquarters and Headquarters Squadron CO Memo 1910 17/A, subj: Notification of Separation Proceedings by Reason of Misconduct in the case of [Petitioner], 14 January 1992
(9) Petitioner's Memo 1910 17/A, subj: Acknowledgment of my Rights to be Exercised or Waived during Separation Proceedings, 24 January 1992
(10) Marine Corps Air Station █ Headquarters and Headquarters Squadron CO Memo 1910 17/A, subj: Administrative Separation Proceedings by Reason of Misconduct in the case of [Petitioner], 24 January 1992
(11) Camp █ MCB CG Memo 1900 17/A, subj: Administrative Separation Proceedings by Reason of Misconduct in the case of [Petitioner], 31 January 1992
(12) Department of Veterans Affairs Letter 377/BEST/JB, 19 March 2021

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 27 September 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).

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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.

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 19 July 1989. See enclosure (2).

d. On 8 November 1990, Petitioner was formally counseled for drunk and disorderly conduct. See enclosure (3).

e. On 2 January 1991, Petitioner received nonjudicial punishment (NJP) for assaulting a fellow Marine with a metal pipe in violation of Article 128, Uniform Code of Military Justice (UCMJ). See enclosure (4).

f. On 30 September 1991, Petitioner was formally counseled for financial irresponsibility and failure to pay just debts. Specifically, Petitioner was counseled for writing three worthless checks between 3 August 1991 and 10 August 1991 for approximately \$215.00. See enclosure (3).

g. On 28 October 1991, Petitioner was referred for substance abuse treatment after testing positive for the use of marijuana. According to the treatment record, Petitioner denied the use of any illicit substance and claimed to have been set up. It was the counselor's impression that Petitioner was a drug abuser, and that he minimized his use of alcohol and/or drugs. Petitioner was recommended for Level II substance abuse treatment. See enclosure (5).

h. On 13 December 1991, Petitioner completed Level II substance abuse rehabilitation treatment and was returned to full duty status. See enclosure (6).

i. On 19 December 1991, Petitioner was convicted by a summary court-martial (SCM) of wrongful use of marijuana in violation of Article 112a, UCMJ.¹ He was sentenced to be confined for 30 days, to forfeit \$75.00 pay per month for one month, and to be reduced to E-1. See enclosure (7).

j. By memorandum dated 14 January 1992, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to his use of illegal drugs. See enclosure (8).

k. On 24 January 1992, Petitioner waived his right to consult with counsel and to request an administrative discharge board. See enclosure (9).

¹ It does not appear that this was a new use of marijuana, but rather the punishment for the positive test discussed in paragraph 3g for which Petitioner was referred for substance abuse treatment.

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l. By memorandum dated 24 January 1992, Petitioner's commander recommended to the separation authority that Petitioner be involuntarily discharged under other than honorable (OTH) conditions by reason of misconduct due to "a pattern of drug abuse." See enclosure (10).

m. By memorandum dated 31 January 1992, the separation authority directed that Petitioner be separated from the Marine Corps under OTH conditions by reason of misconduct due to his illegal drug use. See enclosure (11).

n. On 28 February 1992, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to drug abuse. See enclosure (2).

o. On 19 March 2021, the Department of Veterans Affairs (VA) determined that Petitioner's service in the Marine Corps for the period 19 July 1989 through 28 February 1992 would be considered honorable for VA purposes. This determination rendered Petitioner eligible for any VA benefits that otherwise would have accrued to him but for his OTH discharge. In making this determination, the VA found that although Petitioner made some mistakes during his service, he also completed treatment for his drug and alcohol abuse and had shown progress. See enclosure (12).

p. Petitioner offered no explanation for why his characterization of service should be upgraded other than the determination made by the VA, as discussed in paragraph 3o above.

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice.

The Majority found no error or injustice in Petitioner's original discharge under OTH conditions for misconduct due to drug abuse. It appears that all of the procedural requirements were met, and Petitioner waived his right to an administrative discharge board after being properly notified and informed of his rights. There is also nothing in the record to raise doubts regarding Petitioner's use of illegal drugs. Accordingly, the Majority found no error or injustice in Petitioner's original discharge under OTH conditions.

In addition to considering the circumstances of Petitioner's discharge at the time, the Majority also 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 Board considered, among other factors, that Petitioner's service has been characterized as honorable for VA purposes; the totality of Petitioner's service in the Marine Corps; that Petitioner completed Level II substance abuse treatment; the relatively minor 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. By itself, the Majority did not find the VA characterization of Petitioner's service to be persuasive, as the VA determination in this regard does not serve the same purpose as the Marine Corps' determination. The Majority did, however, note that there was virtually no passage of time between Petitioner's reportedly successful completion of Level II substance

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abuse treatment and his discharge from the Marine Corps for the same drug use for which he received treatment. This deprived Petitioner of any opportunity to demonstrate his rehabilitation pursuant to the treatment. Combined with the other factors discussed above, the Majority felt that the mitigating circumstances outweighed Petitioner's drug use, and that an upgrade of Petitioner's characterization of service to general (under honorable conditions) was therefore warranted.

Although not specifically requested by the Petitioner, the Majority considered whether an upgrade to Petitioner's characterization of service to fully honorable was warranted in the interests of justice. Given the totality of the circumstances, however, the Majority determined that such relief is not warranted. Although it found that the mitigating circumstances outweighed Petitioner's misconduct so as to justify an upgrade of his characterization of service to general (under honorable conditions), the Majority did not find those mitigating circumstances to so significantly outweigh Petitioner's misconduct to justify such extraordinary relief. Accordingly, the Majority determined that an upgrade of Petitioner's characterization of service to general (under honorable conditions), as requested by Petitioner, best serves the interests of justice.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following correction 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 RECOMMENDATION:

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 warranting relief.

The Minority concurred with the Majority determination that there was no error or injustice in Petitioner's original discharge under OTH conditions for drug abuse. It disagreed with the Majority determination, however, that the totality of the circumstances warranted relief in the interests of justice. Specifically, the Minority believed that several of the factors relied upon by the Majority to justify its decision actually weighed against the relief recommended by the Majority. For example, the Minority believed that the entirety of Petitioner's career in the Marine Corps weighed heavily against the relief recommended. Over the course of his approximately two years in the Marine Corps prior to the illegal drug use for which he was ultimately discharged, Petitioner had been counseled for drunk and disorderly conduct and writing bad checks, and received NJP for hitting a fellow Marine in the head with a metal pipe. This record does not reflect honorable service. Further, the Minority was not as influenced as was the Majority by Petitioner's participation in Level II rehabilitation treatment. In this regard,

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the Minority noted that Petitioner's participation in this program was not voluntary, and that he was less than forthcoming about his dependency when first referred to treatment. Finally, the Minority noted that Petitioner provided the Board with no evidence of any post-service record of accomplishment or contributions upon which relief could be based. In the absence of such evidence, the Minority believed that the totality of the circumstances weighed heavily against granting the requested relief.

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

11/4/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief – Upgrade to General (under honorable conditions))

MINORITY Recommendation Approved (Deny Relief)

12/8/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]