



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

██████████  
Docket No: 5167-21  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,  
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 w/attachments  
(2) DD Form 214  
(3) NAVMC 118(11), Administrative Remarks, 18 April 2002  
(4) Marine Corps Base ██████████ Memo 1700/2 SACC, subj: Screening Report in the case of [Petitioner], 16 May 2002  
(5) Voluntary Statement of [Petitioner], 31 May 2002  
(6) DD Form 458, Charge Sheet  
(7) Summary Court-Martial Memorandum Pretrial Agreement, in the case of *United States v. [Petitioner]*, 20 June 2002  
(8) NAVMC 118(13), Record of Conviction by Summary Court-Martial, 31 July 2002  
(9) ██████████ Battalion, ██████████ Marines CO Memo 1910 17/187-02, subj: Notification of Separation Proceedings, 26 July 2002  
(10) Petitioner's Memo 1910 17/187-02, subj: Acknowledgement of my Rights to be Exercised or Waived during Separation Proceedings, 26 July 2002  
(11) ██████████ Battalion, ██████████ Marines CO Memo 1910 lgl/wrf, subj: Administrative Discharge of (Respondent) [Petitioner], 9 October 2002  
(12) Marine Corps Base ██████████ CG Memo 1910 17-187-02, subj: Administrative Discharge of (Respondent) [Petitioner] (Second Endorsement of Enclosure (11)), 29 October 2002  
(13) BCNR Letter Docket No: NR20210005167, subj: Advisory Opinion ICO [Petitioner], 12 November 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, hereinafter referred to as the

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Board, requesting that his characterization of service, narrative reason for separation, separation code, and reentry code be upgraded.

2. The Board reviewed Petitioner's allegations of error or injustice on 28 January 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. 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 evidence 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 interest 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 28 April 2000. See enclosure (2).

d. By message dated 27 November 2001, the Navy Drug Lab San Diego (CA) confirmed that a urine sample provided by Petitioner tested positive for the use of codeine. See enclosure (3). By memorandum dated 16 May 2002, this use of codeine was determined by the Director, Substance Abuse Counseling Center, Marine Corps Base ██████████ to be the result of a legitimate misunderstanding. Specifically, it was determined that Petitioner purchased Tylenol in Japan with a label printed in Japanese, so he likely did not know that the product contained codeine. See enclosure (4).

e. On 31 May 2002, Petitioner admitted to three separate uses of marijuana during June 2001, providing specific details of each incident. See enclosure (5).

f. On 11 June 2002, one specification of the wrongful use of marijuana on divers occasions in violation of Article 112a, Uniform Code of Military Justice (UCMJ), was preferred against Petitioner. This charge was referred to a special court-martial by the convening authority on 18 June 2002. See enclosure (6).

g. On 20 June 2002, Petitioner entered into a pretrial agreement with the convening authority whereby he agreed to plead guilty and to unconditionally waive his right to an administrative separation board in exchange for the referral of the charge preferred against him to a summary court-martial (SCM). See enclosure (7).

h. On 12 July 2002, a SCM convicted Petitioner, pursuant to his plea, of the wrongful use of marijuana on diver occasions in violation of Article 112a, UCMJ. He was sentenced to be reduced to the pay grade of E-2. On 18 July 2002, the convening authority approved this sentence and ordered it executed. See enclosure (8).

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i. By memorandum dated 26 July 2002, Petitioner was notified that his command intended to recommend that he be discharged from the Marine Corps by reason of misconduct due to drug abuse. The basis of this proposed separation was Petitioner's confession described in paragraph 3e above and his SCM conviction described in paragraph 3h above. See enclosure (9).

j. On 26 July 2002, Petitioner waived his right to a hearing before an administrative separation board. See enclosure (10).

k. By memorandum dated 9 October 2002, Petitioner's commander recommended that Petitioner be administratively separated from the Marine Corps under other than honorable (OTH) conditions by reason of misconduct due to drug abuse. In this recommendation, Petitioner's commander stated that Petitioner refused to testify in the prosecution of the other Marines with whom he had admitted using marijuana. See enclosure (11).

l. By memorandum dated 29 October 2002, the separation authority directed that Petitioner be discharged from the Marine Corps under OTH conditions by reason of misconduct due to drug abuse. See enclosure (12).

m. On 29 October 2002, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct. See enclosure (2).

n. Petitioner contends that he had an alcohol problem during his service in the Marine Corps which caused him to make bad decisions. He further asserts that he has been attending Alcohols Anonymous (AA) meetings for many years, and that his wife was been a great support for his disease. Petitioner provided documentation of his post-service employment record at Target, reflecting his advancement through several levels of leadership, favorable work ethic, and excellent customer service. See enclosure (1).

o. Petitioner's records and application were reviewed by a qualified mental health expert, who provided an advisory opinion for the Board's consideration. The AO noted that Petitioner's in-service records provide no evidence of any mental health diagnosis or reported psychological symptoms or behavioral changes. It concluded that the preponderance of the evidence failed to establish that Petitioner suffered from a mental health condition during his military service or that his misconduct could be mitigated by a mental health condition. See enclosure (13).

#### MAJORITY CONCLUSION:

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

The Majority found no error or injustice in Petitioner's discharge from the Marine Corps under OTH conditions for drug abuse. Petitioner admitted to using marijuana on three separation occasions with fellow Marines, pled guilty to using marijuana on divers occasions in this SCM, and waived his right to an administrative separation board. The nature and volume of this misconduct was more than sufficient to warrant an OTH condition.

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Because Petitioner based his claim for relief in part upon his mental health condition,<sup>1</sup> the Majority reviewed his application in accordance with reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claimed mental health condition and any effect that it may have had upon his misconduct. In this regard, the Majority substantially concurred with the AO that the preponderance of the evidence did not establish that Petitioner suffered from a mental health condition during his military service or that his misconduct could be mitigated by a mental health condition. The Majority did not doubt that Petitioner had an alcohol problem which adversely affected his judgment, but that is not a mental health condition for which liberal consideration is warranted in accordance with reference (b).

In addition to applying liberal consideration to Petitioner's claimed mental health condition and the 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 contention that his alcohol problem caused him to make bad decisions; that Petitioner has taken steps to rehabilitate himself by attending AA meetings; Petitioner's post-service employment record; the relatively minor and non-violent nature of the misconduct for which Petitioner was discharged; the fact that all of the misconduct for which Petitioner was discharged took place over the course of less than one month out of his otherwise meritorious Marine Corps career; that Petitioner cooperated in the criminal investigation and pled guilty at his SCM; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. In particular, the Majority took note of the tone of Petitioner's commander in describing Petitioner's refusal to testify against his peers, and questioned whether this resulted in his recommendation for a harsher discharge than was otherwise warranted. Based upon these considerations, the Majority believed that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, and that partial equitable relief was therefore warranted in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions), and that his narrative reason for separation and associated entries on his DD Form 214 should be changed to minimize future negative inferences that may be drawn from Petitioner's naval record.

The Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable in the interests of justice, but determined that the mitigating circumstances did not so significantly outweigh the misconduct for which Petitioner was discharged to warrant such extraordinary relief. Additionally, the Majority determined that no change to Petitioner's reentry code was warranted given the totality of the circumstances.

#### 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:

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<sup>1</sup> Petitioner indicated in Block 13 of Enclosure (1) that an "Other Mental Health" condition was related to his request. He did not, however, provide any clinical evidence of a mental health condition or state what condition he suffered from. The Board assumed that Petitioner was referring to his excessive use of alcohol.

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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 par. 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 corrective action be taken on 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 warranting relief.

Like the Majority, the Minority also found no error or injustice in Petitioner’s discharge from the Marine Corps under OTH conditions given the circumstances. The Minority also agreed with the Majority conclusion that there was insufficient evidence, even upon the application of liberal consideration, that Petitioner suffered from a mental health condition at the time of his service or that his misconduct could be mitigated by a mental health condition.

The Minority disagreed with the Majority conclusion, however, that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged. The Minority recognized Petitioner’s post-service employment accomplishments and his efforts to rehabilitate through participation in AA meetings, but found that Petitioner’s significant misconduct outweighed the potentially mitigating factors. Also unlike the Majority, the Minority found Petitioner’s refusal to assist in the prosecution of the Marines that he identified as marijuana users to be a factor weighing against relief under the totality of the circumstances. Accordingly, the Minority determined that relief 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.

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.

2/18/2022

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to General (under honorable conditions); Change narrative reason for separation and associated entries on DD Form 214 to reflect “Secretarial Authority”; No further relief)

MINORITY Recommendation Approved (Deny Relief)

Petitioner’s Request Approved (Full Relief -- Upgrade to Honorable; Change narrative reason for separation and associated entries on DD Form 214 to reflect “Secretarial Authority”; Change reentry code to “RE-1”)

3/17/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]