



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

██████████  
Docket No: 5742-21  
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, ██████████

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," 25 July 2018

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 214  
(3) NAVMC 118-12, Offenses and Punishments, 26 September 2001  
(4) ██████████ ██████████ CO Memo 1000 B CO, subj: Recommendation for Administrative Separation; Case of [Petitioner], 27 September 2001  
(5) ██████████ ██████████ CO Memo 1010 Legal, subj: Notification of Separation Proceedings, 12 October 2001  
(6) Petitioner's Memo 1910 Legal, subj: Acknowledgment of my Rights to be Exercised or Waived during Separation Proceedings, 12 October 2001  
(7) ██████████ ██████████ CO Memo 1900 Legal, subj: Recommendation for Administrative Separation of [Petitioner], 16 October 2001  
(8) ██████████ ██████████ CO Memo 1910 17, subj: Administrative Separation in the case of [Petitioner] (First Endorsement of Enclosure (7)), 26 October 2002

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.<sup>1</sup>

2. The Board reviewed Petitioner's allegations of error or injustice on 1 October 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 service records, and applicable statutes, regulations, and policies, to include reference (b).

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<sup>1</sup> Petitioner did not specify to what he wished for his characterization of service to be upgraded.

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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 17 January 2001. See enclosure (2).

d. On 26 September 2001, Petitioner received nonjudicial punishment (NJP ) for wrongfully using nitrous oxide, a Schedule V controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), and for soliciting another Marine to disobey a lawful general regulation in violation of Article 134, UCMJ.<sup>2</sup> See enclosure (3).

e. By memorandum dated 27 September 2001, Petitioner's company commander recommended that he be administratively separated from the Marine Corps under other than honorable (OTH) conditions for misconduct by reason of drug use. See enclosure (4).

f. By memorandum dated 12 October 2001, Petitioner was notified that he was being recommended for administrative separation for his use of an illegal substance. See enclosure (5).

g. On 12 October 2001, Petitioner waived his right to consult with counsel and to request a hearing before an administrative discharge board. See enclosure (6).

h. By memorandum dated 16 October 2001, Petitioner's battalion commander recommended that he be administratively discharged from the Marine Corps under OTH conditions for misconduct due to drug abuse. See enclosure (7).

i. By memorandum dated 26 October 2001, the separation authority directed that Petitioner be separated from the Marine Corps under OTH conditions for misconduct due to drug abuse. See enclosure (8).

j. On 19 November 2001, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct. See enclosure (2).

k. Petitioner contends that he was young and made a mistake when he used nitrous oxide. He also contends that he has served his community honorably for the past 20 years, and is requesting a second chance to clear his name. In support of this request, Petitioner submitting evidence of his post-service educational and professional accomplishments. See enclosure (1).

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<sup>2</sup> Petitioner solicited other Marines to use nitrous oxide with him.

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**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 Board considered, among other factors, that Petitioner admitted to his misconduct and wrote what appears to be a sincere apology to his command at the time of his misconduct; the relatively minor nature of Petitioner's misconduct; that nitrous oxide does not currently appear on the schedule of controlled substances; Petitioner's post-service record of accomplishment and service to his community; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon this review, 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 the totality of the circumstances warranted an upgrade of Petitioner's characterization of service to fully honorable, but determined that the mitigating circumstances did not so significantly outweigh the 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 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.

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 in this regard than did the Majority. Specifically, the Minority did not believe that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged. In making this determination, the Minority noted that Petitioner's misconduct did not consist only of his use of an illegal substance, but also included the solicitation of other Marines to do the

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same. This offense was perhaps worse than the actual drug use, as it had a greater potential to interfere with the good order and discipline of Petitioner's unit, as well as its readiness, in the immediate aftermath of the attacks of 11 September 2001. Although this offense was not cited as the basis for Petitioner's discharge, it is included among the totality of circumstances and weighs heavily against relief. Accordingly, the Minority determined that relief is 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.

11/5/2021

[REDACTED]

Executive Director

**ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:**

MAJORITY Recommendation Approved (Grant Relief – Upgrade Characterization of Service to General (under honorable condition))

**MINORITY Recommendation Approved (Deny Relief)**

12/8/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]