



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

[REDACTED]
Docket No: 1888-22

Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED], USMC,
[REDACTED]

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 118(11), Administrative Remarks, 21 February 2007
(4) NAVMC 10132, Unit Punishment Book

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 Board, requesting that his characterization of service be upgraded to general (under honorable conditions) and that his reentry code be changed to RE-3.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 27 April 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 included the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies, to include reference (b).

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 interests of justice to waive the statute of limitations and review Petitioner's application on its merits.

¹ Petitioner requests the change to his reentry code so that he will be eligible to enlist in the [REDACTED] National Guard subject to a waiver.

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██████████

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 30 May 2006. See enclosure (2).

d. On 12 September 2006, Petitioner began a period of unauthorized absence (UA), and remained absent until 12 February 2007.² Petitioner elected not to make a statement when counseled for this misconduct. See enclosure (3).

e. On 20 February 2007, Petitioner received non-judicial punishment (NJP) for the above referenced UA in violation of Article 86, Uniform Code of Military Justice (UCMJ).³ He elected not to appeal his NJP. See enclosure (4).

f. On 8 March 2007, Petitioner was discharged from the Marine Corps under other than honorable (OTH) conditions for misconduct, and was assigned a reentry code of RE-4.⁴ See enclosure (2).

g. Petitioner contends that he has grown and matured significantly since his UA at the age of 19, and that he went UA because his fiancée at the time was threatening to end their relationship. He states that he has learned from his actions that “Honor and Respect” are almost impossible to get back once lost. He hopes to join the ██████████ Army National Guard in an attempt to regain the honor that he lost, but cannot do so with his current characterization of service and/or reentry code. In support of his application, Petitioner provided three character references from his coworkers and a recent criminal records check reflecting no criminal activity. See enclosure (1).

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 original discharge under OTH or in his assigned reentry code. Petitioner does not dispute that he was in a UA status for 153 days. Considering that more than half of Petitioner’s short time in the Marine Corps was in a UA status, his service was appropriately characterized and his ability to reenlist appropriately restricted.

In addition to considering the specific circumstances of Petitioner’s discharge at the time, the Majority also considered the totality of the circumstances to determine whether equitable relief is now warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, Petitioner’s obvious rehabilitation and remorse, as reflected by his humble acceptance of responsibility and expressed desire to rebuild the honor

² Petitioner was absent for 153 days.

³ Petitioner’s punishment consisted of reduction to E-1 (from E-2); forfeiture of ██████████ per month for two months; restriction for 45 days; and extra duty for 45 days.

⁴ Other than the DD Form 214, the relevant administrative separation documentation was not included in Petitioner’s naval record. In the absence of evidence to the contrary, the Board relied upon the presumption of regularity to conclude that Petitioner was afforded all due process inherent in his involuntary separation under OTH conditions.

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and respect lost as a result of his actions; Petitioner's desire to serve his community and the Nation in the [REDACTED] Army National Guard; the letters of support from Petitioner's coworkers, reflecting Petitioner's strong work ethic, character, and reputation in his community; Petitioner's post-service record of employment and the absence of any criminal record; the circumstances of Petitioner's misconduct, to include his contention that he went UA because his fiancée at the time had threatened to end their relationship; Petitioner's estrangement from his father resulting from his unfavorable discharge; Petitioner's relative youth and immaturity at the time of his discharge; and the passage of time since Petitioner's discharge. Based upon this review, the Majority found that the mitigating circumstances sufficiently outweighed Petitioner's significant misconduct such as to warrant the equitable relief that he requested.

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:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as general (under honorable conditions) and that his reentry code was RE-3C.

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 concurred with the Majority conclusion that there was no error or injustice in Petitioner's original discharge under OTH conditions or in the assignment of his RE-4 reentry code. It disagreed with the Majority conclusion, however, that equitable relief is warranted in the interests of justice in accordance with reference (b). The Minority considered the same mitigating circumstances as did the Majority, but simply did not believe that they collectively outweighed the very serious misconduct for which Petitioner was discharged. Petitioner's career in the Marine Corps lasted a total of 282 days, of which he was UA for 153 days. Under these circumstances, the Minority believed that OTH was, and remains, the appropriate characterization of Petitioner's service, and that to characterize it otherwise would be an insult to the thousands of Marines who serve honorably through all adversity. The Minority agrees that the evidence reflects significant maturity and growth in Petitioner since his discharge, and had great respect for Petitioner's self-awareness and desire to make things right, but simply did not find evidence of sufficient post-service contributions to his community or society which would warrant the extraordinary relief that he seeks. Accordingly, the Minority did not believe that equitable relief was warranted.

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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.

5/23/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief, pursuant to the Majority recommendation above)

MINORITY Recommendation Approved (Deny Relief)

7/11/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

[REDACTED]