



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

[REDACTED]
Docket No: 1984-22
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]
XXX XX [REDACTED] USMCR

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)

Encl: (1) DD Form 149 w/ enclosures
(2) Advisory Opinion (AO) of 8 Jun 22

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 service history be corrected to reflect no break in service from September of 2009 through September of 2012 so that he could be awarded the Selected Marine Corps Reserve Medal (SMCRM). Enclosures (1) and (2) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 August 2022, and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, applicable statutes, regulations, and policies, to include reference (b).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. Petitioner enlisted in the Marine Corps and was honorably discharged into the Individual Ready Reserve (IRR) in an inactive status on 20 June 2007 upon completion of his required active service. He was erroneously awarded the SMCRM for the period from 21 July 2006 – 20 July 2009 which, during a records audit in February of 2021, was subsequently administratively revoked in light of his not having joined the Selected Marine Corps Reserve (SMCR) until 28 August 2009.

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c. After Petitioner's initial service began in the SMCR, he experienced considerable transfers between the SMCR and IRR, as follows:

- Transfer to the IRR on 11 December 2010, with a return to the SCMR by 21 December 2010;
- Transfer to the IRR on 16 May 2011 while awaiting active duty (AD) orders to Officer Candidate School (OCS), with AD service at OCS beginning [REDACTED]
- Return to the IRR on [REDACTED] following completion of OCS, with transfer back into the SMCR on 1 September 2011;
- Appointment as a second lieutenant (O-2) on 15 December 2011 while serving in the SMCR; and,
- Transfer into the IRR on 17 September 2012 prior to joining The Basic School in an AD status as a student on [REDACTED]

d. Petitioner contends that his excessive transfers between an SMCR and IRR status were due to administrative error because he had been improperly advised to do so by his command. He further contends that the resulting breaks in service have inequitably impacted his eligibility for award of the SMCRM, which requires continuous service in the SMCR. He seeks remedy of his lack of continuity of service in order to permit eligibility for the SMCRM. In support of his contentions, Petitioner included correspondence regarding his efforts and discussions with administrative personnel during his efforts to remedy the circumstances surrounding his entitlement to the SMCRM.

e. Because Petitioner contends his entitlement to an award was adversely impacted by improper administrative transfers between the SMCR and IRR, the Board requested and considered enclosure (2), an Advisory Opinion (AO) from the Navy Department Board of Decorations and Medals. The AO found that, although Petitioner's record of service does not technically meet the criteria of the SMCRM, there are circumstances in his case which may constitute material error and/or injustice sufficient to provide a basis for granting relief. Specifically, multiple subject matter experts (SMEs) have assessed that "improper administrative processes were occurring at the command" which resulted in Petitioner's frequent component code changes between the SMCR and IRR, resulting in inconsistencies in his SMCR participation which adversely affected his eligibility for the technical requirements of the SMCRM. These SMEs confirmed, for example, that it was irregular and unnecessary to drop a Marine to the IRR to attend OCS and that this consideration, combined with other administrative irregularities such as the late submission of fitness reports from Petitioner's unit at the time of the contended errors, are sufficient to rebut a presumption of regularity concerning the administrative actions taken during the period in question even though Petitioner does not have further evidence to substantiate his claims that his command erroneously advised him to drop into the IRR. When considered in light of Petitioner's overall exemplary record of service, the AO concluded that it was unlikely Petitioner was aware that dropping from the SMCR into the IRR would compromise his eligibility for the SMCRM and, likewise, that it is reasonable that he did so upon receipt of erroneous advice or a mistaken belief that doing so was the expected practice.

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CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action in the form of partial relief. The Board reviewed the application under the guidance provided in the references.

In this regard, the Board noted that Petitioner's breaks in service technically would disqualify him from the award for the SMCRM. With respect to Petitioner's specific request to correct his record to reflect continuous service in the SMCR notwithstanding his record of transfers in and out of the IRR, the Board found insufficient evidence to establish that the breaks in service reflected in Petitioner's record resulted from actual error. However, the Board unequivocally concurred with the AO that Petitioner's excessive, brief transfers between the SMCR and IRR are, if not actual error, clearly anomalous to accepted administrative practices as confirmed by diverse, reliable SMEs. Further, the Board observed that these abnormal transfers were the sole apparent reason that Petitioner failed to qualify for the requested award. The Board found that the irregularities which contributed to the breaks in Petitioner's SMCR service unjustly barred Petitioner from award of the SMCRM, for which the totality of his official records reflects that he would have otherwise qualified. As a result, the Board concluded that Petitioner's ineligibility for the SMCRM resulted from an injustice which merits equitable remedy in the form of awarding Petitioner the SMCRM for his reserve service from 28 August 2009 through 17 September 2012. In reaching this conclusion expressly upon equitable relief, the Board determined that further changes to Petitioner's dates of service – specifically, his transfers between the SMCR and IRR which the Board already determined do not constitute actual erroneous – are not required because actual continuous service is not requisite to an equitable grant of a service award. Accordingly, the Board determined that it is in the interest of justice to grant partial relief.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's record be corrected to reflect award of the SMCRM for the period of his service from 28 August 2009 through 17 September 2012.

That Petitioner be issued appropriate documentation application to the above award.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in 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.

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5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/31/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]