



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

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Docket No: 2916-22  
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █  
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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 (12), Offenses and Punishments  
(4) NAVMC 118 (13), Record of Conviction by Court Martial, 29 November 1977  
(5) Petitioner's Memo SJB:des 1900, subj: Hardship Discharge; request for, 8 November 1979  
(6) Petitioner's Letter, subj: Humanitarian Discharge of SNM, 29 October 1979  
(7) █ Company Light, █ Battalion Memo DFH:des 1900, subj: Hardship Discharge; request for (FIRST ENDORSEMENT of Enclosure (6)), 8 November 1979  
(8) CMC Msg, subj: Req for Dis by Reason of Hardship/CofG case of [Petitioner], dtg 300926Z Nov 79

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 honorable.

2. The Board reviewed Petitioner's allegations of error or injustice on 9 May 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 record, 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.

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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 5 May 1976. See enclosure (2).

d. On 24 August 1977, Petitioner began a period of unauthorized absence (UA) which lasted until he surrendered himself to his command on 29 October 1977. See enclosure (3).

e. On 29 November 1977, Petitioner was convicted by a special court martial (SPCM) for violating Article 86, Uniform Code of Military Justice, based upon the above referenced UA. He was sentenced to be confined at hard labor for 30 days, to forfeit \$60.00 per month for a period of six months, and to be reduced to the pay grade of PFC (E-2). See enclosure (4).

f. On 15 December 1977, the convening authority approved the sentence as adjudged and ordered it executed, but suspended the adjudged confinement at hard labor for a period of six months. See enclosure (4).

g. By memorandum dated 8 November 1979, Petitioner requested a hardship discharge due to the health of his parents.<sup>1</sup> See enclosure (5). He was reportedly about eight months short of his end of active service (EAS) date at the time of this request. See enclosure (6).

h. By memorandum dated 8 November 1979, Petitioner's supervisor endorsed his request for a hardship discharge, recommending that the request be approved. In this endorsement, Petitioner's commander noted that Petitioner had become a licensed Baptist minister and had stated his intent to enter the ministry fulltime upon the end of his enlistment. This endorsement confirmed that Petitioner's EAS date was 9 July 1980. See enclosure (7).

i. By orders dated 30 November 1979, the separation authority directed Petitioner's discharged from the Marine Corps for the convenience of the government.<sup>2</sup> Petitioner was assigned a reentry code of RE-3C, and a characterization of service "as warranted by [service record]." See enclosure (8).

j. On 11 December 1979, Petitioner was discharged from the Marine Corps under honorable conditions for the convenience of the government.<sup>3</sup> See enclosure (2).

k. Petitioner contends that he should have been honorably discharged because he served faithfully following his SPCM conviction and was subsequently promoted on several occasions following his conviction. He further notes that he was not involuntarily separated, and was

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<sup>1</sup> Petitioner reported by letter dated 29 October 1979 that his father was awaiting open heart surgery to repair the blockage of his arteries by cholesterol plates (atherosclerotic heart disease). He also reported that his mother was disabled due to Mineare's Disease, and unable to care for herself. His father's condition therefore necessitated his presence at home so that he could care for both of his parents. See enclosure (6).

<sup>2</sup> Petitioner's request for a hardship discharge was disapproved because his request reportedly did not meet the criteria for such a discharge. The discharge for the convenience of the government was approved as an alternative.

<sup>3</sup> The Board presumes that Petitioner's service record was determined to warrant a general (under honorable conditions) characterization of service due to his previous SPCM conviction.

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discharged only a few months short of his EAS due to a family crisis. Finally, Petitioner provided context to his UA, reporting that he did not return from an authorized leave due to significant marital and financial crises, and that he ultimately returned to duty by his own volition. 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 interest of justice.

The Majority found no error or injustice in Petitioner's original discharge under honorable conditions, as he requested to be discharged and the SPCM conviction in his naval record was sufficient to warrant such a characterization at the time.

In addition to reviewing the circumstances of Petitioner's discharge at the time for error or injustice, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, the circumstances of Petitioner's UA, as he reported them; the fact that Petitioner returned from UA upon his own volition; that Petitioner apparently was rehabilitated following his SPCM conviction, as reflected by several promotions and the fact that his average final proficiency marks were sufficient to warrant an honorable discharge despite the misconduct in his record; that Petitioner was only several months short of his EAS at the time of his discharge, and likely would have been honorably discharged upon reaching his EAS but for the family medical crisis outside of his control; the relatively minor and non-violent nature of Petitioner's misconduct; and the passage of time since Petitioner's discharge. Based upon its review of the totality of the circumstances, the Majority determined that equitable relief is warranted in the interest of justice. Specifically, the Majority's finding that Petitioner almost certainly would have been honorably discharged upon his EAS but for the family medical crisis which necessitated his early discharge was the most persuasive factor in the Majority determination that an upgrade is warranted in the interests of justice.

**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 for the period 5 May 1976 to 11 December 1979 was characterized as honorable.

That Petitioner be issued an Honorable Discharge certificate.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrections be made to Petitioner's naval record.

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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 determination that there was no error or injustice in Petitioner's original discharge under honorable conditions at the time that it was issued. The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (b), but disagreed with the Majority conclusion in this regard. Specifically, the Minority found that the severity of the misconduct in Petitioner's naval record outweighed all of the potentially mitigating circumstances, so his characterization of service remains appropriate given the totality of the circumstances. The Minority believed that relief might be warranted under the circumstances if Petitioner's service have been characterized as other than honorable, but simply found no injustice in Petitioner's actual characterization of service given the substantiated adverse information in his naval record.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommended 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.

5/31/2022

[REDACTED]

Executive Director

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[REDACTED]

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief – Upgrade characterization of service to honorable; no further relief)

MINORITY Recommendation Approved (Deny Relief)

7/20/2022

[REDACTED]  
Acting Assistant General Counsel (M&RA)  
[REDACTED]