



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

█
Docket No. 6269-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ USMC

Ref: (a) 10 U.S.C. § 1552
(b) USD (P&R) 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 (P&R) 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 (19641116 – 19681122)
(3) NAVMC 118(9), Combat History – Expeditions – Awards Record
(4) DD Form 214 (19741213 – 19761014)
(5) NAVMC 118(3), Record of Service
(6) Petitioner’s Attorney’s Letter, 18 February 1975
(7) █, █, █ █ CO Memo █ 6000, subj:
Psychological Evaluation, case of [Petitioner], 26 February 1975
(8) Petitioner’s Memo █ 1910, subj: Request for discharge to escape court-martial, 8 October 1976
(9) █ █ SJA Memo 1 █ 1910, subj: Request for discharge for the good of the service; case of [Petitioner], 13 October 1976
(10) BCNR Memo Docket No: NR20220006269, subj: Advisory Opinion ICO [Petitioner], 31 October 2022

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.

2. The Board reviewed Petitioner’s allegations of error or injustice on 9 January 2023 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 references (b) and (c).

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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, the statute of limitation was waived in accordance with reference (b).

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 16 November 1964. See enclosure (2).

d. Throughout this enlistment, Petitioner participated in several combat operations in Vietnam. See enclosure (3).

e. On 22 November 1968, Petitioner was honorably discharged and transferred to the Marine Corps Reserve. See enclosure (2).

f. Petitioner reenlisted in the Marine Corps and began a second period of active duty service on 13 December 1974.¹ See enclosure (4).

g. On 3 February 1975, Petitioner commenced a period of unauthorized absence (UA). See enclosure (5).

h. On 19 February 1975, Petitioner returned to duty with a letter from his civilian attorney, dated 18 February 1975, which informed his commander of Petitioner's desire to terminate his present enlistment. This letter explained that Petitioner came under severe financial pressures in the latter part of 1974 which, combined with other problems, created a severe emotional stress which impaired his abilities. Petitioner's attorney expressed Petitioner's desire to be examined and processed for administrative separation for medical reasons at the earliest date possible, and his own believe that this would be in the best interest of the Marine Corps. The letter referenced medical reports and tests conducted on Petitioner that were to be sent by separate correspondence which supposedly indicated a severe mental impairment sufficient to justify Petitioner's separation as unit for service.² See enclosure (6).

i. By memorandum dated 26 February 1975, Petitioner's commander referred the letter discussed in paragraph 3h above to the Regimental Surgeon, and requested that Petitioner be psychologically evaluated to determine his suitability for further service in the Marine Corps.³ This memorandum suggested that the promised medical evidence had not yet been received. See enclosure (7).

¹ Petitioner disclosed a conviction for driving under the influence of alcohol on 7 January 1973 during this second enlistment process, but denied any mental health symptoms.

² These records were not provided for the Board's review.

³ It does not appear from the record that this requested psychological evaluation ever occurred, as Petitioner sooner thereafter departed for another extended period of UA.

j. On 3 March 1975, Petitioner commenced a second period of UA which lasted until 30 September 1976.⁴ See enclosure (5).

k. By memorandum dated 8 October 1978, Petitioner requested discharge to escape trial by court-martial.⁵ In making this request, Petitioner indicated his understanding that if his request were approved that he would receive an undesirable discharge without referral to or consideration of his case by an administrative discharge board. See enclosure (8).

l. By memorandum dated 13 October 1976, the convening authority's Staff Judge Advocate endorsed Petitioner's discharge request, recommending its approval and that Petitioner receive an undesirable discharge. See enclosure (9).

m. On 13 October 1976, the separation authority approved Petitioner's request and directed his undesirable discharge. See enclosure (9).

n. On 13 December 1974, Petitioner was discharged from the Marine Corps under other than honorable (OTH) conditions. See enclosure (4).

o. Petitioner claims to have suffered from depression after his first enlistment, and that he was dealing with financial issues at the time of his second enlistment.⁶ He also provided evidence of his membership in a carpenter's union, of which he claims to have been a member since 1983. See enclosure (1).

p. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. This review revealed that Petitioner denied any mental health symptoms during his separation physical. The AO found no evidence that Petitioner was diagnosed with a mental health condition while in the Marine Corps, although he went UA again before a psychological evaluation could be completed after his first UA. It also found that Petitioner's personal statement is not sufficiently detailed to establish any clinical symptoms or to provide a nexus to Petitioner's misconduct. Finally, the AO stated that "it is difficult to attribute an extended period of UA to a mental health condition." Based upon the available evidence, the AO found insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and insufficient evidence that Petitioner's misconduct could be attributed to PTSD or another mental health condition.⁷ See enclosure (10).

⁴ Petitioner was absent for 577 days during this period of UA.

⁵ Petitioner made this request after consulting with counsel.

⁶ Petitioner checked block 13 of his DD Form 149 indicating that his application was related to post-traumatic stress disorder (PTSD), but provided no personal narrative or clinical evidence supporting this claim. The Board notified Petitioner that his application did not include any documentation to support his claim of a mental health condition and invited him to supplement his application by letter dated 25 August 2022, but nothing further was received.

⁷ This AO was served on Petitioner by letter dated 1 November 2022 to provide him an opportunity to respond, but no such response was ever received.

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.

Because Petitioner based his claim for relief in whole or in part upon Petitioner's claimed mental health condition(s), the Majority reviewed his application in accordance with the guidance of reference (b). Accordingly, the Board applied liberal consideration to Petitioner's claimed mental health condition(s) and the effect that the condition(s) may have had upon his conduct. Even applying liberal consideration, the Majority found insufficient evidence that Petitioner suffered from PTSD. He checked this block on his DD Form 149, but did not claim it or otherwise discuss it in his narrative and provided no clinical evidence of any condition. The Majority disagreed with the AO finding, however, that there was insufficient evidence that Petitioner suffered from another mental health condition or that that condition contributed to Petitioner's misconduct. In this regard, the Majority noted that Petitioner's civilian attorney notified Petitioner's command of Petitioner's mental health concerns upon his return from his first UA in enclosure (6). Although the medical evidence that he promised was never delivered, the Majority found it unlikely that Petitioner's attorney would have fabricated the existence of such medical evaluations. The Majority noted that this report from 1975 is consistent with Petitioner's current claim. Finally, the Majority noted that Petitioner's performance during his second enlistment was very different than his performance during his first enlistment, indicating a change in behavior following his participation in multiple combat operations. For these reasons, the Majority disagreed with the AO's conclusion, finding Petitioner's claim of depression after his first enlistment to be plausible and sufficient evidence that his misconduct was mitigated by this condition.

In addition to applying liberal consideration to Petitioner's claimed mental health condition and the effect of that condition on his conduct in accordance with reference (b), 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 (c). In this regard, the Majority considered, among other factors, the mitigating effect of Petitioner's mental health condition upon his misconduct, as discussed above; Petitioner's extensive combat experience during his first enlistment; that Petitioner may have developed mental health symptoms as a result of his combat experiences; that Petitioner's first enlistment was served honorably; Petitioner's post-service record of employment, as evidenced by his long-term membership in a carpenter's union; the non-violent nature of Petitioner's misconduct; 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 found that the mitigating circumstances sufficiently outweighed the severity of Petitioner's misconduct to warrant an upgrade of his characterization of service to general (under honorable conditions).

Although the Majority found the mitigating circumstances to outweigh the severity of Petitioner's misconduct to warrant an upgrade of his characterization of service, it did not find those mitigating circumstances to so significantly outweigh the severity of Petitioner's misconduct to warrant the extraordinary relief of an upgrade of his characterization of service to

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fully honorable. In this regard, the Majority noted that the duration of Petitioner's second UA added to its severity, and weighed heavily against 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.

Like the Majority, the Minority also applied liberal consideration to Petitioner's claimed mental health condition(s) and the effect that the condition(s) may have had upon his misconduct in accordance with reference (b). In this regard, the Minority concurred with the Majority conclusion that, even upon the application of liberal consideration, there is insufficient evidence to find that Petitioner suffered from PTSD. Applying very liberal consideration, the Minority also found sufficient evidence that Petitioner may have been suffering from depression or a related mental health condition. The Minority disagreed with the Majority conclusion, however, that there was sufficient evidence to conclude that Petitioner's misconduct was mitigated by his mental health condition. Even applying very liberal consideration, there simply was no rational nexus between Petitioner's undocumented mental health condition and his 577-day UA. First, Petitioner did not even attempt to tie his misconduct to his mental health condition. Rather, he stated simply that he suffered from depression after his first enlistment and had some financial issues when he reenlisted. While these may be mitigating factors to consider among the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice, they do not explain how Petitioner's depression contributed to his misconduct. To the contrary, the Minority found a disconnect between Petitioner's claimed financial troubles and his voluntary action to cut off his guaranteed Marine Corps salary and diminish his future employment prospects by going UA for 577 days. Further, Petitioner's UA clearly was not an avoidance mechanism, as UAs are commonly explained in the context of PTSD or other mental health conditions, because Petitioner's depression developed between his enlistments and he voluntarily sought reentry into the Marine Corps in the midst of this depression. Finally, the Minority could conceive of no logical connection between the depression claimed by Petitioner and his decision to go and remain UA for 577 days. Accordingly, the Minority concurred with

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the AO conclusion that there was insufficient evidence that Petitioner's misconduct could be attributed to PTSD or another mental health condition.

The Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (c). In this regard, the Minority considered the same potentially mitigating factors as did the Majority. Having found no nexus between Petitioner's misconduct and any mental health condition, however, the Minority found the mitigating circumstances to be of significantly less weight than did the Majority. Further, the Minority found the duration of Petitioner's UA to be extremely aggravating, and to significantly outweigh all of the potentially mitigating circumstances. The Minority considered the Petitioner's combat experience as a potentially mitigating factor, but noted that he had already received an honorable discharge as a result of that service, despite several instances of misconduct during his first enlistment. As such, the Minority did not find that previous service to be particularly relevant in characterizing a period of service encompassing approximately 22 months, of which all but two months were spent either in a UA status or pending discharge for that UA. Finally, the Minority noted that Petitioner offered the Board virtually no evidence of his post-service accomplishments or contributions to society upon which equitable relief might be based. As such, the Minority simply found no basis for the equitable relief requested by the Petitioner. Ultimately, the Minority believed that Petitioner was fortunate to have avoided a court-martial conviction for his significant misconduct, and that his OTH characterization of service was, and remains, appropriate given the totality of the circumstances.

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.

3/6/2023

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

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____ MAJORITY Recommendation Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

____ Petitioner’s Request Approved (Full Relief – I generally concur with the Majority conclusion that equitable relief is warranted in Petitioner’s case, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I believe that the mitigating circumstances far outweigh the severity of Petitioner’s misconduct, and that Petitioner’s characterization of service should therefore be upgraded to fully honorable. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service was characterized as honorable, and that he be issued an Honorable Discharge certificate for his second enlistment.)

4/21/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]