



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

██████████
Docket No. 9502-22
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 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) DD Form 553, Deserter/Absentee Wanted by the Armed Forces, 20 Jun 2002
(4) DMS HQMC PPO POS-40 Message, subj: Report Return of Absentee(s) Wanted by the Armed Forces, 17 November 2002
(5) ██████████ SPCM Order and Action No. 24-03, 11 April 2003
(6) United States v. [Petitioner], in the U.S. Navy-Marine Corps Court of Criminal Appeals, NMCCA 200301000, decided 29 July 2003
(7) Navy and Marine Corps Appellate Leave Activity SPCM Supplemental Order No. 03-1939, 30 October 2003
(8) NDRB Discharge Review Decisional Document, Docket No. MD04-01477, 21 July 2005
(9) BCNR Letter CRS Docket No: 4603-06, 12 July 2006
(10) NDRB Discharge Review Decisional Document, Docket No. MD07-00970, 21 August 2008
(11) NDRB Letter ██████████, 6 February 2009
(12) BCNR Letter ██████████ Docket No: 2783-09, 3 December 2009
(13) BCNR Letter ██████████ Docket No. NR6867-14, 20 October 2014
(14) ██████████ (██████) Memo, subj: Statement of Service – ██████████ Air National Guard – ██████████ 17 November 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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded and that his "characterization of service code be expunged."¹

¹ This application constitutes a request for reconsideration of the Board's previous denials of Petitioner's discharge upgrade requests in Docket Nos. 4603-06 and 2783-09, based upon the provision of new matters not previously considered by the Board. Petitioner was denied reconsideration of these previous decisions in Docket No. 6867-14,

2. The Board reviewed Petitioner's allegations of error or injustice on 3 February 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. 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.

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 22 May 2001. Enclosure (2).

d. On 28 August 2001, Petitioner absented himself from his appointed place of duty without authority and remained absent until his apprehension by civilian authorities on 14 November 2002. Enclosures (3) and (4).

e. On 16 December 2002, Petitioner was convicted by a special court-martial (SPCM), pursuant to his plea, of one specification of unauthorized absence (UA) terminated by apprehension in violation of Article 86, Uniform Code of Military Justice (UCMJ). He was sentenced to 75 days of confinement; forfeitures of \$700 pay per month for three months; reduction to E-1; and a bad-conduct discharge (BCD). Enclosure (5).

f. On 11 April 2003, the convening authority approved the sentence as adjudged, but suspended all confinement in excess of 60 days for a period of 12 months.² Enclosure (5).

g. On 29 July 2003, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the findings and sentence of Petitioner's SPCM. Enclosure (6).

h. On 30 October 2003, Petitioner's BCD was ordered executed. Enclosure (7).

i. On 15 December 2003, Petitioner's BCD was executed. Enclosure (2).

j. Petitioner first applied for discharge relief from the Naval Discharge Review Board (NDRB) on 21 September 2004. Specifically, he requested that his characterization of service be upgraded to honorable and that his narrative reason for separation be changed to entry-level separation, based primarily upon clemency matters and his contention that a BCD was overly

but reference (a) has since been amended to mandate reconsideration upon the presentation of matters not previously considered by the Board.

² It appears from the record that confinement was deferred until initial action by the convening authority pursuant to a pretrial agreement.

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severe compared to what other branches would have given for the same offense.³ On 13 July 2005, the NDRB unanimously determined that clemency was not warranted and that Petitioner's BCD would not be changed. Enclosure (8).

k. On 12 July 2006, the Board denied Petitioner's first application for discharge relief in Docket No. 4603-06. He claimed that it was not his intention to be absent without leave, but that he could not afford to leave his mother in economic hardship at the time. He also claimed to have worked hard and attended classes at a local university since his discharge, and that he had matured significantly. Enclosure (9).

l. On 27 June 2007, Petitioner again applied for discharge relief from the NDRB. Specifically, he requested that his characterization of service be changed to uncharacterized (i.e., an entry-level separation) based upon clemency matters. On 6 August 2008, the NDRB again unanimously denied Petitioner's request for clemency after a personal appearance hearing. Enclosure (10).

m. By letter dated 6 February 2009, the NDRB informed Petitioner that he was not eligible for further review, and that his next avenue for appeal was this Board. See enclosure (11).

n. On 3 December 2009, the Board denied Petitioner's second application for discharge relief in Docket No. 2783-09. Petitioner claimed that he was working to provide for his family while he was absent "to make sure they would not have to live on the streets while [he] was enlisted." He also asserted that his courage and commitment were evident by his continuing efforts to secure a change to his reenlistment code so that he could reenter the military. Enclosure (12).

o. By letter dated 20 October 2014, the Board refused to reconsider Petitioner's request for a second time. Enclosure (13).

p. On 27 June 2017, Petitioner enlisted in the [REDACTED] and has served continuously since that time. He has earned several commendations in this capacity, to include the Air Reserve Forces Meritorious Service Medal, the Military Outstanding Volunteer Service Medal, the [REDACTED] State Good Conduct Ribbon, and the [REDACTED] State Achievement Medal. Enclosure (14).

q. In support of his request for clemency, Petitioner states that he has received multiple service recognitions since being discharged from the Marine Corps. He also claims to have been involved in his community through the Boy Scouts of America, as both a leader and a Wood Badge recipient, and as a coach for local youth soccer teams. According to the resume he provided with his application, Petitioner has been continuously employed as a Night Auditor for [REDACTED] since August 2003, and has worked as a Pharmacy Technician for [REDACTED] since March 2020. Enclosure (1).

³ Petitioner claimed that he had been a good citizen since his release from [REDACTED] on 2 January 2003, and that he had been gainfully employed since 2 February 2003. He also claimed to be enrolled at the University of [REDACTED]—Superior to further his education in accounting, and otherwise had a clean criminal record. He also suggested that an entry level separation was appropriate since he had not finished his training.

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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 clemency is warranted in the interests of justice.

The Majority considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, Petitioner's post-service record of continuous employment; Petitioner's volunteer service and contributions to his community; the letters of support provided by Petitioner with his previous applications attesting to his character, work ethic, and contributions to the community; Petitioner's meritorious service in the [REDACTED]; Petitioner's relative youth and immaturity at the time of his misconduct; Petitioner's demonstrated remorse for his actions and proactive efforts to atone for his mistake; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Majority found that clemency is warranted in the form of an upgrade of his characterization of service to general (under honorable conditions) and a change to his narrative reason for separation. Specifically, the Majority believed that Petitioner's has clearly rehabilitated himself, and that his record of contributions to his community, state, and nation since his discharge is worthy of equitable relief.

While finding clemency to be warranted under the circumstances, the Majority did not believe that an upgrade of Petitioner's characterization of service to fully honorable was warranted. In this regard, the duration of Petitioner's absence, which continued even after the events of September 11, 2001, and the fact that Petitioner's UA was terminated only by apprehension, weighed heavily against such extraordinary relief.

To the extent that Petitioner requested that his "characterization of service code be expunged," the Majority notes that it is not within the Board's authority to expunge a court-martial conviction.

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 interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN par 6214"; and that his separation code was "JFF1."

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.

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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 material error or injustice warranting relief.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether clemency is warranted in accordance with reference (b). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority, but reached a different conclusion from its analysis. Specifically, the Minority believed that the severity of Petitioner's misconduct far outweighed the mitigating circumstances warranting relief. Petitioner was in an UA status for 442 days, and his UA ended only because he was apprehended by civilian authorities. During his absence, the nation was attacked and went to war, so while thousands of individuals who were not otherwise committed enlisted to serve their country in its time of need Petitioner elected not abide by his previous commitment. Further, absent his apprehension Petitioner likely would have remained absent indefinitely. For such severe misconduct, Petitioner spent only two months in confinement. This was a minimal sentence for such severe misconduct, and reflects that Petitioner has already enjoyed significant leniency for his offense. Further, Petitioner's current status in the [REDACTED] reflects that he has not suffered the justifiable consequences that normally accompany a BCD. As such, the Minority simply did not believe that further clemency is warranted in the interests of justice, and therefore recommended that Petitioner's application for relief be denied.

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.

3/15/2023

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

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

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

____ MAJORITY Recommendation Approved (with modifications) (Grant Relief – I generally concur with the Majority conclusions, 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 outweighed the misconduct for which Petitioner was discharged, and that an upgrade of Petitioner’s characterization of service to fully honorable is therefore warranted. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as fully honorable. I further direct that Petitioner be issued an Honorable Discharge Certificate.)

4/21/2023

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]