



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. 222-23
Ref: Signature Date

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Dear █:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 18 May 2023. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinion contained in Headquarters, U.S. Marine Corps (HQMC) memorandum 1900 MMSR-4 of 23 March 2023 and your response to the opinion.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

On 15 August 2005, you entered active duty.

In accordance with MCO 1040.31 published on 8 September 2010, the following basic reenlistment prerequisites pertain to all Marines applying for reenlistment: Have no alcohol related incidents while operating a vehicle or any other mode of transportation. This restriction is only subject to the current enlistment contract and extensions to that contract. This may be waived by HQMC.

On 3 September 2016, you reenlisted for 4 years and 4 months with an End of Current Contract of 2 January 2021. Furthermore, you received a Zone C Selective Retention Bonus (SRB). On 1 August 2017, you were promoted to Gunnery Sergeant/E-7.

On 12 January 2018, you signed an administrative remarks (NAVMC 118(11)) counseled this date concerning the following deficiencies: Violation of the UCMJ Article 92 and failure to display good judgment, decision making, leadership and to set the example as a Staff Noncommissioned Officer. "Specifically, that you failed to report to your chain of command your arrest for driving under the influence on or about 13 August 2016 and intentionally concealed this fact from your command until you reported in November 2016 your conviction in a █ court for driving a motor vehicle while intoxicated. You had a duty to report your arrest under Naval Regulation 1137 and SECNAV M-5510.30 at the time of your arrest, because you possessed a security clearance and are required to report to your supervisor any incident or situation that could affect your continued eligibility for access to classified information. Your failure to report your arrest also resulted in your being permitted to reenlist despite the fact you failed to meet the prerequisites for reenlistment under MCO 1040.31".

On 18 January 2018, you wrote a rebuttal for the 6105 that you received on 12 January 2018 stating that you accept the administrative discipline for your actions. "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands in times challenge and controversy". 18 Months ago I made a decision that has changed my life in its entirety. From that experience, I have grown as a woman, a wife, and a Marine. The SNCO creed says "both my professional and personal demeanor may be such that I may take pride if my juniors emulate me." Despite the circumstances of that day, I have worked diligently leading my Marines with vigor and dedication and my Marines have full trust in confidence in my capabilities as a leader. That day serves at the catalyst that pushes me to strive to attain perfection although perfection doesn't exist. True colors show when the chips are down and mine have shown that I am a true professional and will do everything to preserve the integrity of the organization. I have learned from this and share my experiences to ensure Marines don't fall into the same position".

On 16 April 2018, you signed an agreement to extend enlistment for 5 months with an EAS of 2 June 2021 in order to meet obligated service requirements for Permanent Change of Station orders to █.

On 7 June 2018, you signed an adverse USMC Fitness Report (NAVMC 10835A) for the period of 18 October 2017 to 10 May 2018 due to derogatory material. The following was listed: "SNM received a NAVMC 118(11), 6105 counseling on 12 Jan 2018 for violation of UCMJ Article 92 and failure to display good judgement when SNM failed to report a DUI arrest on 13 August 2016 and conviction in a █ court for said arrest. Directed Comment, Sect A, Item 8h: SNM is best qualified for promotion to Master Sergeant."

In accordance with MARADMIN 135/19 published on 4 March 2019, retirement with at least 20 years of service continues to be the standard retirement entitlement for those who complete a career in the Military Services. Early retirement serves as an additional force management tool to meet the needs of the Marine Corps and approval of Temporary Early Retirement Authority

(TERA) requests remains an exception to policy governing the regular retirement of service members in MCO 1900.16. Per NDAA for FY 2017, DODI 1332.46, SECNAV memo that delegates authority to Assistant Secretary of the navy (ASN) to establish and maintain TERA, and ASN memorandum that delegates authority to the Marine Corps to establish and maintain TERA, the Marine Corps is authorized to offer voluntary early retirement under certain criteria to Active Component (AC) and Active Reserve (AR) Marines with more than 15 and less than 20 years active duty. This authority extends through 31 December 2025 unless sooner rescinded.

On 6 October 2021, a Physical Evaluation Board (PEB) found you unfit and recommended you be separated from Active Duty with severance pay with 20% combined disability rating. Additionally, your disability was incurred while entitled to receive basic pay, did not occur during a period of unauthorized absence, the disability is not the result of intentional misconduct or willful neglect. The disability did occur after 14 Sep 1978. The disability did not result from a combat related injury as defined by Title 26 U.S. Code Section 104(b)(3).

On 1 November 2021, you submitted an administrative action (NAVMC 10274) to Commanding Officer, █, █, Marine Corps Base, █ requesting TERA.

On 4 November 2021, President, Physical Evaluation Board notified Commandant of the Marine Corps (CMC) that per SECNAVINST 1850.4F and SECNAV M-1850.1, the President of the Physical Evaluation Board, acting for the Secretary of the Navy, has considered your physical condition e as referred by a Medical Evaluation Board to determine your fitness for continued Naval service.

FINDING. You were found UNFIT to perform the duties of your office, grade, rank, Military Occupational Specialties (MOS), or rating due to a disability. A disability percentage assigned in accordance with the Veterans Affairs Schedule for Rating Disabilities is listed next to your name.

DISPOSITION. It was requested to effect your SEPARATION from the Naval service with severance pay but without further disability benefits under the provisions of 10 U.S.C. § 1203 or 1206, as appropriate. You were rated 20% disability with a VA Code 8513.

On 13 December 2021, CMC notified you via Commanding Officer, █, █, Marine Corps Base, █ that your request for TERA was disapproved.

You are to be discharged with severance effective 1 November 2021, per PEB Index No. █ of 4 November 2021.

You were discharged with an Honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 15 August 2005 to 30 January 2022 due to disability, severance pay, not combat related IDES.

You requested retirement under TERA. You also requested correction to your DD Form 214 effective 30 January 2022 to reflect five vice four Good Conduct Medals reflected in block 13. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You disagree that TERA was correctly disapproved and you were not provided with justification or facts. However, the Board concluded that TERA is not an entitlement. Although you were eligible to apply for TERA, CMC has the authority to deny your request. Furthermore, although no specific reason for CMC denial was given, the Board determined that you are not eligible for retirement under TERA due to your arrest in August 2016 and subsequent conviction. Because you concealed your arrest from your command, you were permitted to reenlist for SRB on 3 September 2016 even though you failed to meet the prerequisites for reenlistment under MCO 1040.31. Your failure to inform your command of your arrest led you to be permitted to reenlist, to benefit from SRB, to receive years of active duty pay and entitlements, and a promotion to Gunnery Sergeant. The Board determined that to award you a retirement under TERA would not be appropriate. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

Concerning the correction request to your DD Form 214 (five vice four Good Conduct Medals), the Board did not consider this request because you have not exhausted all administrative remedies prior to requesting said change to this Board. You must first submit said request to HQMC (MMMA), 2079 Barnett Ave., Quantico, VA 22134-5103. If HQMC disapproves said request you may submit your request to this Board with HQMC's disapproval letter. You will need to complete a new DD Form 149 requesting said change.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/22/2023

