



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

█  
Docket No. 7100-23  
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) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014
  - (c) PDUSD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)," 24 February 2016
  - (d) 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
  - (e) 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
  - (3) NAVMC 10132, Unit Punishment Book, 24 May 2002
  - (4) NAVMC 118(11), Administrative Remarks, 11 June 2002
  - (5) NAVMC 10132, Unit Punishment Book, 21 June 2002
  - (6) NAVMC 10132, Unit Punishment Book, 30 July 2002
  - (7) NMC █ █ CO Memo 5350 CKA, subj: Substance Abuse Treatment of [Petitioner], 1 November 2002
  - (8) NAVMC 10132, Unit Punishment Book, 9 January 2003
  - (9) █, █ Memo 1900 BAS, subj: Medical Statement ICO [Petitioner], 1 August 2003
  - (10) █, █ CO Memo 1900 6, subj: Notification of Separation Proceedings, 12 October 2003
  - (11) Petitioner's Statement, 12 October 2003
  - (12) Petitioner's Memo 1900 6, subj: Acknowledgement of my Rights to be Exercised or Waived during Separation Proceedings, 13 October 2003
  - (13) █, █ CO Memo 1900 6, subj: Recommendation for Administrative Separation, in case of [Petitioner], 14 October 2003

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER A [REDACTED]  
[REDACTED] USMC

- (14) [REDACTED], [REDACTED] CO Memo 1900 S-1, First Endorsement on Enclosure (13), subj: Recommendation for Administrative Separation in the case of [Petitioner], 31 October 2003
- (15) [REDACTED] CG Memo 1910 SJA, Second Endorsement on Enclosure (13), subj: Administrative Separation in the case of [Petitioner], 23 December 2003
- (16) Petitioner's VA Compensation and Pension Examination Records, 30 August 2018
- (17) NDRB Discharge Review Decisional Document, Docket No. MD05-00036
- (18) BCNR Letter [REDACTED] Docket No: 01885-09, 7 December 2009
- (19) Department of Veterans Affairs Rating Decision 26 October 2018
- (20) BCNR Memo Docket No: NR20230007100, subj: Advisory Opinion ICO [Petitioner] 21 September 2023

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.<sup>1</sup>

2. The Board considered Petitioner's allegations of error or injustice on 6 November 2023 and, pursuant to its governing policies and procedures, determined that the equitable relief indicated below is warranted 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 references (b) – (e).

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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 limitation and consider Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and commenced a period of active duty service on 21 February 2001. See enclosure (2).

d. On 23 May 2002, Petitioner received non-judicial punishment (NJP) for being disrespectful in language toward two superior non-commissioned officers, in violation of Article 91, Uniform Code of Military Justice (UCMJ); and for violating a lawful order by wrongfully drinking alcohol, in violation of Article 92, UCMJ. He was required to forfeit \$289 pay per month for one month.<sup>2</sup> See enclosure (3).

---

<sup>1</sup> This application constitutes a request for reconsideration of the Board's previous denial of relief in Docket No. 1885-09.

<sup>2</sup> This punishment was suspended for six months.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

e. On 11 June 2002, the suspension of Petitioner's punishment for the NJP referenced in paragraph 3d above was vacated due to his purchase and consumption of alcohol on 1 June 2002. See enclosure (4).

f. On 14 June 2002, Petitioner received his second NJP for violating a written order issued by his company commander by wrongfully purchasing and consuming alcohol while on restriction, in violation of Article 92, UCMJ.<sup>3</sup> He was required to forfeit \$289 pay; was restricted for seven days; and required to perform extra duties for 14 days. See enclosure (5).

g. On 26 July 2002, Petitioner received his third NJP for unauthorized absence (UA) from on or about 1 July 2002 until on or about 16 July 2002, in violation of Article 86, UCMJ. He was reduced in grade to Private First Class; required for forfeit \$619 pay per month for two months; restricted for 45 days; and required to perform extra duty for 45 days.<sup>4</sup> See enclosure (6).

h. On 1 November 2002, Petitioner completed Level III inpatient rehabilitation treatment for alcohol abuse. His prognosis for no further substance abuse was assessed as fair. See enclosure (7).

i. On 9 December 2002, Petitioner received his fourth NJP for possessing and consuming distilled spirits in the barracks in violation of Article 92, UCMJ; and for being drunk and incapacitated for the performance of his duties in violation of Article 134, UCMJ.<sup>5</sup> He was reduced in grade to Private (E-1); required to forfeit \$552 pay per month for two months; restricted for 45 days; and required to perform extra duty for 45 days.<sup>6</sup> See enclosure (8).

j. In early 2003, Petitioner deployed to [REDACTED] as part of the [REDACTED]. According to contemporaneous letters provided with his application, he was with the initial force elements which crossed the [REDACTED] border from [REDACTED] in March 2003 upon the commencement of [REDACTED], during which he was an active participant in combat operations. See enclosure (1).

k. Upon his return from deployment, Petitioner resumed treatment for alcohol abuse. By memorandum dated 1 August 2003, his battalion surgeon recommended to the command that Petitioner be administratively separated from the Marine Corps. In making this recommendation, the battalion surgeon opined that Petitioner did not fit the criteria for a Major Depressive Disorder, but that he instead has a personality disorder with antisocial traits and poor coping skills. He also opined that Petitioner's alcohol abuse was related to his continued service in the Marine Corps, and suggested that Petitioner would be better able to control his drinking once removed from the Marine Corps. See enclosure (9).

---

<sup>3</sup> This was the same conduct for which the suspension of Petitioner's previous NJP was vacated.

<sup>4</sup> The forfeitures, restriction, and extra duty punishments were suspended.

<sup>5</sup> These offenses, alleged to have occurred on 12 and 13 November 2002, respectively, constituted a violation of Petitioner's Level III treatment aftercare program, rendering him a rehabilitation treatment failure.

<sup>6</sup> The forfeitures, restriction, and extra duty punishments were suspended for six months.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

l. By memorandum dated 12 October 2003, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps due to a pattern of misconduct. The specific basis for this pattern of misconduct was Petitioner's four NJPs, as referenced in paragraphs 3(d), (f), (g), and (i) above, as well as his diagnosis as an alcohol abuser on 17 October 2002.<sup>7</sup> See enclosure (10).

m. By letter dated 12 October 2003, Petitioner acknowledged his understanding that he was being processed out of the Marine Corps due to a pattern of misconduct facilitated by alcohol abuse, and that he had failed Level III alcohol rehabilitation. In this letter, he stated his belief that the Marine Corps "has tried their best to try and help me beat this disease but its [sic] something that cant [sic] be beat while I'm in the Marines [sic] Corps it only gets worse, and I continue to get into trouble because of my alcohol addiction and severe depression." He did not believe that his problems could be solved in the Marine Corps, but was confident that he could get the help he needed at home. See enclosure (11).

n. By memorandum dated 13 October 2003, Petitioner waived his right to consult with counsel and to request an administrative separation board. See enclosure (12).

o. By memorandum dated 14 October 2003, Petitioner's commander recommended that Petitioner be separated from the Marine Corps under other than honorable (OTH) conditions for misconduct due to a pattern of misconduct. In this recommendation, Petitioner's commander stated that Petitioner "has denied that he has a drinking problem and has been given every opportunity to correct his destructive behavior, but he has no desire to fix his problem."<sup>8</sup> See enclosure (13).

p. By memorandum dated 31 October 2003, the next higher commander in Petitioner's chain of command concurred with the recommendation made by Petitioner's battalion commander (see paragraph 3o above). In concurring with the recommendation that Petitioner be administratively separated from the Marine Corps for a pattern of misconduct, this commander noted that Petitioner completed Level III alcohol rehabilitation treatment, but subsequently failed his aftercare program, and had rejected a second opportunity to attend Level III alcohol rehabilitation treatment. See enclosure (14).

q. By memorandum dated 23 December 2003, the separation authority directed that Petitioner be discharged from the Marine Corps under OTH conditions for a pattern of misconduct. See enclosure (15).

r. On 23 January 2004, Petitioner was discharged from the Marine Corps under OTH conditions for a pattern of misconduct. See enclosure (2).

---

<sup>7</sup> This notification memorandum stated that Petitioner was terminated from a four-week outpatient treatment program on 5 November 2002 after only four days as a result of his "poor participation and unauthorized absences," but this statement seems to be contradicted by enclosure (7).

<sup>8</sup> The Board notes that this statement seems inconsistent with Petitioner's statement at enclosure (11).

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

s. Petitioner was diagnosed with post-traumatic stress disorder (PTSD) and alcohol abuse on 16 June 2004. See enclosure (16).

t. On 28 February 2005, the Naval Discharge Review Board (NDRB) unanimously determined that no change to Petitioner's discharge status was warranted.<sup>9</sup> In seeking relief from the NDRB, Petitioner claimed that the circumstances of his discharge came from poor judgment, especially related to his refusal of treatment, and that the same circumstances would not happen again given his desire to improve the quality of life for his family. See enclosure (17).

u. Petitioner was reportedly arrested for the distribution of cocaine in 2008. He reported that he was introduced to cocaine after returning from [REDACTED] and was "really heavy into that," and eventually started to sell cocaine to support his habit. He reported having been sentenced to five years of probation, which he claims to have been shortened due to good behavior. See enclosure (16).

v. On 24 November 2009, the Board denied Petitioner's previous request for relief in Docket No. 1885-09. See enclosure (18).

w. On or about 1 July 2015, Petitioner was arrested for driving under the influence of intoxicating substances (DUI) after running into a concrete median after leaving a bar. See enclosure (16).

x. On 30 August 2018, Petitioner received a Compensation and Pension (C&P) Examination from the Department of Veterans Affairs (VA) pursuant to his claim for disability benefits. The VA provider conducting this examination diagnosed Petitioner with PTSD and alcohol abuse disorder, and found that it was at least as likely as not that his PTSD condition was related to or caused by his military service. In particular, the provider opined that Petitioner's PTSD condition was related to the death of his roommate to "friendly fire" by a sniper during his deployment to Iraq, as well as his exposure to multiple firefights, suicide bombers, and close combat with the enemy.<sup>10</sup> See enclosure (16).

y. On 26 October 2018, the VA granted Petitioner service connection for PTSD (with alcohol use disorder) for treatment purposes only, pursuant to the results of his C&P examination. See enclosure (19).

z. Petitioner asserts that he was suffering from undiagnosed PTSD during his military service, and that his alcohol addiction did not help his situation. He claimed that he was "very angry at everyone and everything" after being discharged because he felt that the Marine Corps punished him for having a mental illness. He referred to the death of his friend at the hands of friendly fire in April 2003, whose body he had to identify, as well as the other deaths that he

---

<sup>9</sup> Petitioner included with his application a letter received from the NDRB notifying him that he was a member of the class identified in the settlement of the *Manker, et. al. v. Del Toro* class action lawsuit.

<sup>10</sup> Petitioner had also reported an incident right after boot camp where he believed that he was drugged and evaded being sexually assaulted, but the VA provider did not include this experience among those contributing to Petitioner's PTSD condition.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

experienced in combat, as the triggering event which caused him mental anguish and to “just shut down.” Petitioner claims that he “fought honorably in Iraq, and just because I had what the officers called a ‘personality disorder’ which influenced my alcoholism, I shouldn’t have been punished for it with an administrative discharge of OTH.” See enclosure (1).

aa. Because Petitioner based his claim for relief upon combat-related PTSD, his application and records were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board’s consideration. The AO noted that among the more than 100 pages of most irrelevant outpatient treatment records from the VA provided by Petitioner there was one note in February 2022 indicating a negative screening for PTSD and depression. It also noted that there was no evidence that Petitioner was diagnosed with a mental health condition or suffered from PTSD while in the Marine Corps, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than alcohol abuse. The AO’s author opined that Petitioner’s once-stated “depression” in-service was likely due to the negative consequences sustained following repetitive alcohol abuse and dependence, as he admitted to pre-service drinking and that his alcohol use increased throughout his service. Accordingly, while the AO found it possible that the traumatic events of Petitioner’s deployment to Iraq exacerbated his drinking, those events cannot be said to have caused the repetitive alcohol use leading to Petitioner’s misconduct. The AO ultimately concluded that there is sufficient evidence of a post-service PTSD diagnosis that may be attributed to Petitioner’s military service, but insufficient evidence that Petitioner’s misconduct could be attributed to PTSD.<sup>11</sup> See enclosure (20).

#### 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.

The Majority found no error or injustice in Petitioner’s discharge for misconduct due to a pattern of misconduct at the time that it was administered. The legitimacy of the misconduct underlying Petitioner’s four NJPs does not appear to be in controversy, as he does not challenge it and admitted at the time that his misconduct was alcohol related. It also appears that all procedural requirements were satisfied to execute this discharge, as Petitioner was properly notified of his proposed administrative separation and waived all of his rights in that regard. In fact, Petitioner essentially asked his command to administratively discharge him rather than accepting their offer for further inpatient alcohol rehabilitation treatment. Finally, the severity and frequency of Petitioner’s misconduct was more than sufficient to justify a discharge under OTH conditions. The Majority noted a couple of factual errors in the documentation supporting Petitioner’s discharge. Specifically, his commander erroneously stated that Petitioner’s participation in the Level III outpatient rehabilitation program was terminated after just four days due to his poor participation and UAs in enclosure (10), when in fact the evidence reflects that Petitioner completed the outpatient rehabilitation program successfully and was only deemed to be a

---

<sup>11</sup> A copy of this AO was provided to Petitioner for comment by letter dated 25 September 2023, but he failed to respond within the 30 days provided.

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

rehabilitation failure during the aftercare program. Additionally, his commander erroneously stated that Petitioner “has denied that he has a drinking problem ... but he has no desire to fix his problem” in enclosure (13), when the evidence reflects that Petitioner immediately acknowledged the problem and indicated a desire to fix it but simply did not believe he would be able to do so in the Marine Corps. The Majority found these errors to be harmless however, as these factual errors were corrected in the endorsement of the administrative separation recommendation made by the next higher commander in Petitioner’s chain of command in enclosure (14) prior to any action by the separation authority.

Because he based his application for relief upon his claimed PTSD condition, the Majority reviewed Petitioner’s application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner’s claimed PTSD condition and the effect that it may have had upon the conduct for which he was discharged. Applying such liberal consideration, and special consideration to the VA’s service connection determination, the Majority found sufficient evidence to conclude that Petitioner developed PTSD as a result of his traumatic experiences while deployed in Iraq. However, even applying liberal consideration, the Majority did not find that this PTSD condition to excuse or mitigate the misconduct for which Petitioner was discharged, because all of that misconduct occurred prior to Petitioner’s deployment. While most, if not all, of the misconduct for which Petitioner was discharged was alcohol related, Petitioner’s alcohol abuse condition predated his deployment, so his misconduct was unrelated to his PTSD condition. Because Petitioner’s PTSD condition was combat-related, the Majority also applied the liberal consideration guidance of reference (a). Specifically, the Majority reviewed Petitioner’s application with liberal consideration that PTSD potentially contributed to the circumstances resulting in Petitioner’s discharge or to the characterization of that discharge. In this regard, the Majority found that Petitioner’s PTSD condition did potentially contribute to his discharge and/or to the characterization of that discharge. While none of the misconduct for which Petitioner was discharged occurred after his deployment, his command elected not to separate Petitioner for that misconduct prior to the deployment. As such, the Majority believed that Petitioner would not have been discharged for that misconduct if not for the continuation of his alcohol abuse after his redeployment. The Majority also found it reasonable to believe that Petitioner’s combat-related PTSD condition contributed to that continued alcohol abuse as he attempted to self-medicate for his otherwise undiagnosed PTSD symptoms. Accordingly, while the Majority did not find Petitioner’s pre-deployment misconduct to be excused or mitigated by his combat-related PTSD, it did find that Petitioner’s combat-related PTSD condition did potentially contribute to the circumstances of his discharge under OTH conditions.

In addition to applying liberal consideration to Petitioner’s PTSD condition in accordance with the guidance of references (a) – (d), the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, that Petitioner’s command did not find the misconduct for which he was ultimately discharged to warrant an involuntary discharge prior to deploying him into combat with his fellow Marines; Petitioner’s wartime service in combat; that Petitioner’s chain of command apparently was willing to offer Petitioner the opportunity for further inpatient alcohol rehabilitation treatment in lieu of an

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

administrative discharge if he had been willing; that Petitioner developed PTSD as a result of his combat service, and has presumably suffered from its effects ever since his discharge; that Petitioner's PTSD condition potentially contributed to the circumstances of his discharge under OTH conditions, as discussed above; that Petitioner's PTSD condition and associated alcohol use may have contributed to his poor judgment in refusing the further outpatient rehabilitation treatment offered by the Marine Corps; 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. The Majority found the combined weight of these mitigating circumstances to sufficiently outweigh the severity of Petitioner's misconduct such as to warrant equitable relief. Specifically, the Majority believed that Petitioner's discharge characterization should be upgraded to general (under honorable conditions), and that his narrative reason for separation should be changed to mitigate the stigma associated with his discharge.

Although the Majority found the mitigating circumstances to sufficiently outweigh the severity of the misconduct for which Petitioner was discharged to justify the equitable relief discussed above, it did not find those mitigating circumstances to so significantly outweigh the severity of Petitioner's pattern of recurrent misconduct to justify the extraordinary relief of an upgrade to his discharge characterization to fully honorable as he specifically requested.

#### 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:

That Petitioner be issued a new DD Form 214 reflecting that Petitioner's service ending on 23 January 2004 was characterized as "General (under honorable conditions)"; that his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN par. 6214"; and that his separation code was "JFF1." All other entries reflected in Petitioner's current DD Form 214 are to remain unchanged.

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.

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge at the time that it was administered.

Like the Majority, the Minority also applied liberal consideration to Petitioner's application in accordance with the guidance of reference (a) – (d), and reached the same conclusions as did the Majority. Specifically, the Minority noted that all of the misconduct for which Petitioner was



Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

discharged predated the triggering event for his PTSD condition, so that misconduct was not excused or mitigated by the condition, but did find it possible that Petitioner's PTSD condition contributed to the circumstances of Petitioner's discharge under OTH conditions.

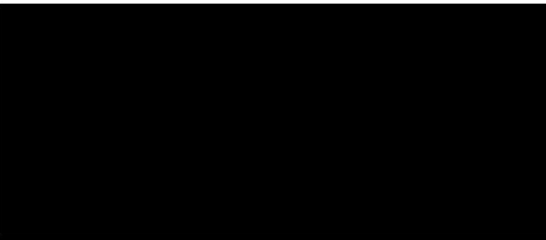
Finally, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority, but reached a different conclusion. Specifically, the Minority noted that Petitioner has been arrested for distributing cocaine and for DUI in the years since his discharge from the Marine Corps. Reference (e) specifically provides that negative post-service conduct, including arrests or criminal charges, should be considered in determining whether to grant relief on the basis of an injustice. As such, Petitioner's two post-service arrests, including one for a serious drug distribution offense and one which involved recklessly endangering the lives of innocent bystanders, weighed heavily against granting any equitable relief. Accordingly, the Minority did not find the mitigating circumstances sufficient to justify any equitable relief in the interests of justice.

#### 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.

11/27/2023



Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]  
[REDACTED] USMC

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- 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 given the totality of the circumstances, but I do not believe that the relief recommended by the Majority to serve the interests of justice. Specifically, I find that the mitigating circumstances did so significantly outweigh the misconduct for which Petitioner was discharged so as to justify the relief that he requested. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s service is to be characterized as “Honorable.” Petitioner is also to be issued an Honorable Discharge Certificate.)

1/6/2024

