



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

[REDACTED]
Docket No: 8914-16

JUN 26 2017

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED] XXX XX [REDACTED]
USMC

Ref: (a) Title 10 U.S.C. §1552

Encl: (1) DD Form 149
(2) Subject's ltr of 29 Mar 17
(3) Page 11 Entry dtd 3 Aug 15
(4) Page 11 Entry dtd 16 Feb 16
(5) [REDACTED] memo of 21 Sep 16
(6) [REDACTED] ADB ltr of 26 Feb 16
(7) MC Recruit Depot [REDACTED] Recruiting Region ltr of 31 Mar 16
(8) SECNAV NCRB ltr of 24 Mar 16
(9) Admin remark pages of 3 Mar 16 and 5 Apr 16
(10) Subject's memo of 5 Jul 16 with endorsements

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board. Petitioner amended his request to the Board by enclosure (2). Petitioner currently requests that any Page 11 entries that in any way relate to the positive urinalysis or Relief for Cause be removed from his Official Military Personnel File (OMPF).

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 5 April 2017 and, pursuant to its regulations, and with a vote of 2 to 1 determined that the evidence was insufficient to establish the existence of probable material error or injustice and that no corrective action should be taken. Documentary material considered by the Board consisted of the Petitioner's application, together with all material submitted in support thereof, the Petitioner's Marine Corps record and applicable statutes, regulations and policies. In addition, the Board considered the correspondence from the Petitioner dated 29 March 2017. See enclosure (3) - (10).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. Petitioner currently requests that any Page 11 entries that in any way relate to the positive urinalysis or Relief for Cause be removed from his military record. Specifically he notes two Page 11s dated 3 August 2015 and 16 February 2016 which he requests be removed from his record. Enclosure (1) - (4). The Petitioner argues that the reports are improper and unjust due to the innocent ingestion of Adderall from a Tylenol bottle in his wife's purse. His soon to be ex-wife had a prescription and, since she was sensitive about her diagnosis, she had placed the pills in a Tylenol bottle. See enclosures (1) and (5).

e. On or about April 2015, Petitioner tested positive for Adderall, a controlled substance for which he was not prescribed. Subsequently, Petitioner was notified of administrative separation and elected his right to present his case to an administrative discharge board (ADB). On 3 August 2015, Petitioner was issued a Page 11 for being relieved of his duties as a Drill Instructor and it was recommended that his additional military occupational specialty (MOS 0911) be voided. See enclosure (3). On 16 February 2016, Petitioner was issued a second Page 11 for his non-recommendation for promotion to Staff Sergeant due to the positive urinalysis result. See enclosure (4).

f. On 26 February 2016, Petitioner's ADB was convened and by a majority vote determined that the preponderance of the evidence did not support the misconduct and recommended retention. See enclosure (6). Petitioner presented evidence that he innocently ingested the Adderall from a Tylenol bottle in his wife's purse. His soon to be ex-wife had a prescription and, since she was sensitive about her diagnosis, she had placed the pills in a Tylenol bottle and carried it around with her in her purse. See enclosure (5). The Commanding Officer approved the ADB's recommendation. See enclosure (7).

g. Following the ADB determination the Petitioner requested to have his Relief for Cause voided and have his MOS reinstated. The requests were granted. See enclosure (2) and (9). Petitioner also submitted a request to have his promotion reinstated since it had been withheld. That request was also granted. See enclosure (2) and (10). Petitioner also underwent a security clearance revocation and reinstatement for the alleged drug use. Petitioner's security clearance was reinstated on 24 March 2016. See enclosure (8).

h. Any documentation about illegal drug use in a service member's record automatically makes him ineligible for reenlistment. Petitioner's enlistment has expired. His command gave him an eight month extension on his enlistment so that he could file this BCNR request. His immediate chain of command supports his reenlistment. See enclosure (9). He had requested a waiver of reenlistment pre-requisites (thus potentially not needing BCNR action) but the Commanding Officer of the Recruit Training Regiment disapproved. See enclosure (10). His current enlistment ends on 30 June 2017. See enclosure (2).

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority of the Board, consisting of [REDACTED] concluded that Petitioner's request did not warrant

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favorable action. In coming to this conclusion, the majority of the Board concluded that the facts presented were not sufficient to warrant the removal of the Page 11's from his OMPF, despite the findings of the ADB because the issuance of the Page 11's and the ADB findings were two separate processes, and the decision of the latter does not cancel out the finding of the former.

MAJORITY RECOMMENDATION:

The majority of the Board recommends that Petitioner's request be denied.

MINORITY CONCLUSION:

[REDACTED] disagreed with the majority, concluding that the Petitioner did meet the burden of proof necessary to establish an injustice warranting relief in the form of removal of the Page 11s. The minority felt that the Petitioner sufficiently demonstrated that his use of the drugs was unknowing and not wrongful and that the Page 11s memorialize counselling that should no longer remain in Petitioner's record since all the underlying actions were later revoked. The minority of the Board felt that the Petitioner should be granted full relief.

MINORITY RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show:

Two Page 11s dated 3 August 2015 and 16 February 2016 be removed in their entirety. These counseling's detail Petitioner being relieved of his duties as a Drill Instructor, recommendation that his additional military occupational specialty (MOS 0911) be voided and non-recommendation for promotion to Staff Sergeant.

All data concerning the positive urinalysis or relief for cause be removed from Petitioner's military record.

That any material or entries inconsistent with the foregoing be corrected, removed or completely expunged from Petitioner's record.

BCNR EXECUTIVE DIRECTOR CONCLUSION:

Notwithstanding the majority's conclusion, I agree with the minority, that the petitioner has established the existence of probable material error or injustice in his record and that full corrective action should be taken as outlined in the minority recommendations. For his use of drugs to be misconduct the ingestion of the drug has to be wrongful. Petitioner's ingestion was not wrongful thus there is no misconduct and the subsequent actions that these two page 11's memorialize were all restored. [REDACTED] was reinstated as a Drill Instructor, he was promoted, his MOS was reinstated and he is currently serving as a Drill Instructor. Additionally, he went through a security review and was granted his security clearance.

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I respect and believe that the people in the best position to judge the credibility of [REDACTED] and his explanation of why he tested positive for amphetamines were the officers at the ADB who by a majority believed that the ingestion was not wrongful. I also note that the same standard, preponderance of the evidence, that guides the Board's decision was also the standard at the ADB. Petitioner's work ethic has not wavered during this period. It would be an injustice to not allow this service member to reenlist and continue to contribute to the Marine Corps.

BCNR EXECUTIVE DIRECTOR RECOMMENDATION:

The Executive Director concurs with the Board Minority Recommendation detailed above.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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 entitled matter.

[REDACTED]

Recorder

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]

Executive Director

~~Reviewed and Approved the Board Majority Recommendation (deny relief).~~

Reviewed and Disapprove the Board Majority Recommendation – Concur with the BCNR Executive Director and Board Minority (grant full relief)

[REDACTED]

29 June 2017
Date