



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

[REDACTED]
Docket No: 529-17
AUG 14 2017

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

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USMC,
XXX-XX-[REDACTED]

Ref: (a) 10 U.S.C. §1552
(b) FITREP for the reporting period 1 April 2010 to 5 March 2011
(c) Certificate of Release or Discharge From Active Duty (DD Form 214) dtd 16 Mar 13
(d) [REDACTED] ltr 1400 XO dtd 5 Jan 17

Encl: (1) DD Form 149
(2) FITREP for the reporting period 1 May 2009 to 31 March 2010
(3) Administrative Remarks (Page 11) promotion restriction entry of 30 Apr 10
(4) Administrative Remarks (Page 11) entry for violation of UCMJ of 23 Jun 10, and notification of AdSep entry of 23 Jun 10, and promotion restriction entry of 25 Feb 11
(5) Administrative Remarks (Page 11) entry assigning reentry code RE-1B of 13 Mar 13
(6) HQMC memo 1610 MMPR-13/PERB of 4 Jan 17

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted Marine, filed enclosure (1) with this Board requesting (1) removal of his fitness report (FITREP) for the reporting period 1 May 2009 to 31 March 2010, (2) removal of his FITREP for the reporting period 1 April 2010 to 5 March 2011, (3) that his discharge documents show that he was discharged in the grade of Staff Sergeant (SSgt) / E-6, and (4) to change his reentry code from RE-1B (denied by CMC, non-select to E-6) to RE-1[A] (recommended and eligible). Enclosures (1) through (6) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 May 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of naval records and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion (AO) provided by Headquarters, Marine Corps, enclosure (6), and Petitioner's rebuttal statement dated 9 January 2017.

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.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USMC,
XXX-XX [REDACTED]

b. Although enclosure (1) was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider his application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 21 June 2004. He was issued an adverse Directed by the Commandant of the Marine Corps (DC) FITREP for the reporting period 1 May 2009 to 31 March 2010, enclosure (2). The adversity of the FITREP is derogatory material and findings of a Family Advocacy Case Review Committee (CRC) regarding substantiated emotional abuse to his family. On 30 April 2010, he was issued an Administrative Remarks (Page 11) entry stating that he was eligible, but would not be promoted to SSgt, enclosure (3). On 23 June 2010, he was issued a Page 11 counseling entry regarding his violation of Article 128 of the Uniform Code of Military Justice for assaulting members of his family through psychological and emotional abuse, enclosure (4). He was issued another Page 11 counseling entry on 23 June 2010 regarding his commission of a serious offense and advising him that he was being processed for administrative separation, enclosure (5). There are no other documents in his official military personnel file (OMPF) that indicate he was processed for administrative separation.

d. Petitioner was issued an adverse Transfer (TR) FITREP for the reporting period 1 April 2010 to 5 March 2011, reference (b). The Performance Evaluation Review Board (PERB) removed the TR FITREP because it was marked adverse with no specifics or clarification as to what the exhibited adversity was, and there was no explanation why he was not recommended for promotion by his Reviewing Officer.

e. On 19 April 2011, Petitioner's name was removed from the FY10 USMC SSgt Select List.

f. On 19 April 2013, Petitioner was honorably discharged in the grade of sergeant / E-5, for non-retention on active duty. He was issued a DD Form 214, reference (c) and assigned an RE-1B (recommended, eligible and requested retention, but denied by CMC) reentry code, and received full separation pay.

g. The AO opined that the contested FITREP ending on 31 March 2010 is administratively and procedurally correct, and that the Petitioner failed to meet the burden of proof necessary to establish an inaccuracy or injustice warranting removal of the report.

h. Petitioner requested that the Board consider reference (d), an advocacy letter provided by his former Executive Officer (XO), and to take a holistic look at his performance during his entire enlistment, and consider his post-service work and education achievements. Petitioner contended that relief is warranted for the following reasons: (1) the CRC used a rating system that was no longer authorized by the Marine Corps, (2) he completed all courses and training required as a result of the CRC findings, (3) his command fabricated reasons to get him separated (i.e., Medical & AdSep Boards), (4) in Marine OnLine, he was promoted and being paid as an E-6 for 2 months, (5) his command illegally forced religion on him, (6) he filed a complaint with the Inspector General but was ignored, and (7) his tour was cut short and he was transferred to a unit deploying to Afghanistan.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board determined that the requested relief, plus additional relief is warranted. In this regard, the Board concurred with the AO finding to the extent that the FITREP ending on 5 March 2011 was in error and that the Marine Corps correctly removed this FITREP from his record. With regard to the FITREP ending on 31 March 2010, the Board found the CRC conclusion, as the sole basis of the adverse DC FITREP, demonstrates an injustice, and that the Marine Corps correctly ended the practice of including CRC conclusions on FITREPs. The Board did not concur with the AO and found the Reviewing Officer comments on the DC FITREP was indicative of an injustice, as they lacked objectivity and ignored the professional attributes of the Petitioner covered by the Reporting Senior. The Board noted that the CRC conclusion was also the sole reason Petitioner's name was removed from the SSgt Promotion Select List and subsequent separation from the Marine Corps. The Board believed that the advocacy letter written by Petitioner's former XO provided further evidence of an injustice warranting relief. Finally, the Board noted that the RO made reference to post-traumatic stress disorder (PTSD) in the personal history of Petitioner.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

✓ Remove from Petitioner's record the adverse DC FITREP for the reporting period 1 May 2009 to 31 March 2010.

✓ Remove from Petitioner's record the Page 11 counseling entry, issued on 30 April 2010, notifying him that he was eligible but would not be promoted to staff sergeant.

Remove from Petitioner's record the Page 11 counseling entry, issued on 23 June 2010, regarding his violation of Article 128 of the Uniform Code of Military Justice for assaulting members of his family through psychological and emotional abuse.

✓ Remove from Petitioner's record the Page 11 counseling entry, issued on 23 June 2010, regarding his commission of a serious offense and advising him that he was being processed for administrative separation.

Issue a Correction to DD Form 214, Certificate of Release or Discharge From Active Duty (DD Form 215) to reflect his grade as "SSGT" vice "SGT," his paygrade as "E6" vice "E5," the separation authority as "MARCORSEPMAN 1005" vice "MARCORSEPMAN 6412," the separation code as "JBK1" vice "JGH1," the narrative reason for separation "COMPLETION OF REQUIRED ACTIVE SERVICE" vice "NON-RETENTION ON ACTIVE DUTY," and the reentry code as "RE-1A" vice RE-1B."

Remove from Petitioner's record any failure of selection to staff sergeant.

Petitioner's record be corrected, where appropriate, to show his date of rank and effective date in the grade of staff sergeant as 19 April 2013.

Subj: REVIEW OF NAVAL RECORD OF FORMER [REDACTED] USMC,
XXX-XX [REDACTED]

No further relief be granted.

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 entitled matter.

[REDACTED]

Recorder

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

[REDACTED]

Executive Director

Reviewed and ~~Approve~~ Deny the Recommendation

[REDACTED]

Signature

Jan 17, 2018

Date