



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

[REDACTED]
Docket No: 6364-17
FEB 0 5 2018

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
[REDACTED] USMC

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to upgrade to his characterization of service to honorable and consider medically retiring him.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 January 2018 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 the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.
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.
 - b. Petitioner entered active duty with the Marine Corps in May 1999. Sporadically during his approximately five years of service he was involved in misconduct that resulted in three non-judicial punishments and a Summary Court-Martial conviction. However, it was two incidents of driving under the influence of alcohol that eventually led to his administrative separation from the Marine Corps.
 - c. After a successful combat tour in Iraq from February 2003 through May 2003, Petitioner was cited for driving under the influence of alcohol by civilian authorities. He was involved in a single vehicle accident where he drove his car into a house. This incident resulted in one of the non-judicial punishments on 23 October 2003 and a referral for alcohol rehabilitation screening. Petitioner was recommended for Intensive Outpatient Alcohol Rehabilitation Treatment in December 2003 and was ordered by his chain of command not to drink alcohol and operate a vehicle.

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
[REDACTED] USMC

d. Unfortunately, Petitioner was cited for another driving under the influence incident on 17 January 2004 that resulted in his final non-judicial punishment. This incident also triggered his administrative separation processing for pattern of misconduct that led to an administrative separation board recommending his separation with an Other than Honorable characterization of service on 26 March 2004.

e. Petitioner was finally admitted into a Substance Abuse Rehabilitation Program on 19 April 2004 but his administrative separation was approved two days later with direction to separate him within 10 days. As a result, Petitioner was disenrolled from the rehabilitation program and discharged on 27 April 2004 with an Other than Honorable characterization of service due to pattern of misconduct.

f. Post-discharge, Petitioner earned a Bachelor of Science degree from [REDACTED] University in Computer and Electrical Engineering and was employed in the Information Technology field from 2011 through 2016. He also had intermittent mental health issues for which he was treated by civilian providers. He was diagnosed with Schizophrenia and suffered through periods of homelessness and difficulties with law enforcement during this period.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the following partial corrective action.

Petitioner raised a number of arguments that were each carefully considered by the Board before making its findings. First, the Board concluded that the Marine Corps failed to properly treat Petitioner for his alcohol abuse before administratively separating him from the Marine Corps. In the Board's opinion, this was an error that mitigates the characterization of service deserved by Petitioner. While the Board determined that Petitioner was criminally responsible for his misconduct and was properly processed and separated in accordance with applicable regulations, they felt he should have been provided the opportunity to complete his rehabilitation program. As a result, the Board felt sufficient mitigation evidence exists to upgrade his characterization of service to General under Honorable conditions. The Board concluded that an Honorable characterization of service was inappropriate in light of the multiple incidents of misconduct committed by Petitioner that led to administrative separation. In the Board's opinion, this misconduct was too numerous and serious, especially the driving under the influence incidents, to be mitigated to allow for an upgrade to an Honorable characterization of service.

Regarding the request for a disability retirement, the Board concluded that insufficient evidence exists to find that Petitioner was unfit for continued naval service due to a qualifying disability at the time of his discharge. The Board considered the evidence that Petitioner successfully completed a difficult course of study at [REDACTED] University after his discharge from the Marine Corps. This was convincing evidence that Petitioner was not suffering from a disability that caused him a substantial occupational impairment at the time of his discharge. The Board lacked evidence that he was unable to perform the duties of his office, grade, rank or rating because he was able to earn a college degree after he was discharged. Further, the Board concluded that he was ineligible for disability processing at the time of his discharge due to his misconduct that resulted in an Other than Honorable characterization of service. The Board considered the 2016

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
[REDACTED] USMC

change in dual processing policy as mitigation evidence for upgrading Petitioner's characterization of service but felt the Marine Corps applied the existing disability policy properly at the time of Petitioner's discharge. Therefore, they concluded no error or injustice exists with Petitioner's discharge for misconduct.

Finally, the Board considered the arguments whether the 2004 misconduct was properly used as a basis for his discharge. The Board concluded the Marine Corps acted properly in administratively separating the Petitioner for his pattern of misconduct. The Board noted that Petitioner was involved in a serious driving under the influence incident prior to the 5 March 2004 non-judicial punishment that Petitioner argues was improper. In the Board's opinion, this offense, combined with prior non-judicial punishment and Summary Court-Martial, were sufficient evidence to administratively separate him for pattern of misconduct. However, the Board felt Petitioner was properly punished for his 2004 driving under the influence incident since he violated a direct order that was issued to reinforce the severity of his previous misconduct and need to abstain from alcohol while operating his vehicle. The Board felt this was a proper use of authority by Petitioner's chain of command in light of the second chance they were giving the Petitioner after his first driving under the influence incident. The Board also did not find persuasive Petitioner's argument that he was not guilty of driving under the influence in 2004 since he was eventually acquitted by civilian authorities. The Board noted that Petitioner admitted to his chain of command that he drank alcohol and operated his vehicle prior to being found guilty at his non-judicial punishment hearing. This was sufficient evidence for the Board to find Petitioner was in fact guilty of his misconduct and the Marine Corps properly used this misconduct to separate him from the Marine Corps.

RECOMMENDATION

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

Petitioner's received a General Discharge under Honorable Conditions upon his discharge from active duty vice an Other than Honorable characterization of service.

A copy of this Report of Proceedings will be filed in 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 entitled matter.

[REDACTED]
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing

Subj: REVIEW OF NAVAL RECORD ICO FORMER MBR [REDACTED]
[REDACTED] USMC

corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]
Executive Director