



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

█  
Docket No. 9202-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █  
█

Ref: (a) 10 U.S.C. § 1552  
(b) 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  
(c) 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 with attachments  
(2) DD Form 4/1, Enlistment/Reenlistment Document, Armed Forces of the United States, 8 August 1986  
(3) DD Form 214  
(4) NAVMC 118 (11), Administrative Remarks, 25 February 1988  
(5) Standard Form 600, Health Record – Chronological Record of Medical Care, 28 February 1989  
(6) NAVMC 118 (12), Offenses and Punishments  
(7) Standard Form 513, Medical Records – Consultation Sheet, 7 September 1989  
(8) Petitioner's Memo 1910 LSST E/2, subj: Request for Separation in Lieu of Trial by Court-Martial, 9 July 1990  
(9) █ Memo 1910 17, subj: Request for Separation in Lieu of Trial by Court-Martial; Case of [Petitioner], 25 July 1990  
(10) █ Memo 1910 17, First Endorsement on Enclosure (8), subj: Request for Separation in Lieu of Trial by Court-Martial; Case of [Petitioner], 27 July 1990  
(11) BCNR Memo Docket No: NR20220009202, subj: Advisory Opinion ICO [Petitioner], 13 March 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.

2. The Board reviewed Petitioner's allegations of error or injustice on 8 May 2023 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval records in the interests of justice. Documentary material considered by the

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies, to include references (b) and (c).

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board 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. 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 on 8 August 1986 pursuant to a waiver for prior marijuana use and civilian offenses, including larceny, assault, and battery. See enclosure (2).

d. Petitioner began a period of active duty service pursuant to his enlistment on 22 October 1986. See enclosure (3).

e. On 25 February 1988, Petitioner was counseled regarding his actions that interfered with medical personnel performing their duties during emergency treatment of a fellow Marine. He was also instructed on proper procedures and responsibilities associated with barracks security watches. Petitioner was advised that further violations of this nature may result in punitive action. Petitioner elected not to make any statement in response to this counseling. See enclosure (4).

f. On 28 February 1989, Petitioner received medical treatment approximately three weeks after reinjuring his right knee. According to the medical records associated with this treatment, the original knee injury occurred approximately five months prior to this session.<sup>1</sup> Petitioner was diagnosed by the examining medical officer with a probable cartilage tear. See enclosure (5).

g. On 4 April 1989, Petitioner received nonjudicial punishment (NJP) for an unauthorized absence from his unit in violation of Article 86, Uniform Code of Military Justice (UCMJ).<sup>2</sup> He was required to forfeit \$50 pay per month for one month. See enclosure (6).

h. On 28 July 1989, Petitioner received his second NJP for UA in violation of Article 86, UCMJ;<sup>3</sup> and disobeying the order of a superior non-commissioned officer (NCO)<sup>4</sup> and being disrespectful in language toward the same NCO,<sup>5</sup> both in violation of Article 91, UCMJ. He was

---

<sup>1</sup> A review of Petitioner's medical records revealed that he originally sought treatment for his knee injury in September 1988. See enclosure (11).

<sup>2</sup> Petitioner was charged with UA for approximately two hours on 10 March 1989.

<sup>3</sup> Petitioner was charged with absenting himself from his appointed place of duty for approximately nine hours (i.e., throughout the duty day) on 13 February 1989.

<sup>4</sup> Petitioner was charged with violating an order to escort his girlfriend away from the BBQ and to another location.

<sup>5</sup> Petitioner allegedly said to the superior NCO, "You can do whatever the f\*\*\* you want Staff Sergeant," and "I don't give a f\*\*\*," or words to that effect.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

reduced to the grade of E-2; required to forfeit \$391 pay per month for one month; and restricted to designated locations for 30 days.<sup>6</sup> See enclosure (6).

i. Petitioner's medical records reflect that he failed to show for two follow up appointments related to his knee injury (see paragraph 3f above). See enclosure (7).

j. On 13 February 1990, Petitioner received a third NJP for being disrespectful toward the duty NCO, in violation of Article 91, UCMJ; and for two specifications of using profound language toward the same duty NCO, in violation of Article 134, UCMJ. See enclosure (6).

k. On 4 June 1990, Petitioner was charged with two specifications of failing to go to his appointed place of duty in violation of Article 86, UCMJ; being disrespectful in language toward a senior NCO, in violation of Article 91, UCMJ; and three specifications of violating lawful orders, in violation of Article 92, UCMJ. See enclosure (8).

l. By memorandum dated 9 July 1990, Petitioner requested to be administratively separated in lieu of trial by court-martial after consulting with counsel. In making this request, he acknowledged that his service would be characterized as other than honorable (OTH) if his request was approved and the lifelong consequences of such an adverse characterization. Accompanying this request was a hand-written letter from Petitioner, in which he explained that his parents had recently divorced after 23 years of marriage, that his father was a drug addict, and that he was very concerned about his family situation. He further stated that the mother of his son would not allow him to see or speak to their child, despite the fact that he had faithfully honored his child support obligations. Based upon these personal problems, Petitioner stated that he had lost the enthusiasm, motivation and dedication to serve in the Marine Corps. See enclosure (8).

m. By memorandum dated 25 July 1990, the command's Staff Judge Advocate found Petitioner's request for discharge in lieu of trial by court-martial to be sufficient in law and fact, and recommended that Petitioner be discharged from the Marine Corps under OTH conditions. See enclosure (9).

n. By memorandum dated 27 July 1990, the separation authority approved Petitioner's request for discharge in lieu of trial by court-martial, and directed his separation from the Marine Corps under OTH conditions. See enclosure (10).

o. On 27 August 1990, Petitioner was discharged from the Marine Corps under OTH conditions for "conduct triable by court-martial" and "for the good of the service." See enclosure (3).

p. Petitioner indicated in block 13 of enclosure (1) that his request was related to a mental health issue.<sup>7</sup> His application was supported by a personal statement which read as follows:

---

<sup>6</sup> The restriction was suspended for three months.

<sup>7</sup> Petitioner was notified by letter dated 17 December 2022 that his claim of a mental health condition was not supported by any material or documentation, and provided 45 days to submit any such matters if he choose to do so. However, no such matters were subsequently provided.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

My ACL was torn during military service. Prior to this injury, I was an athlete. I played basketball through junior high and highschool [sic] on my school's basketball team. I played football for the base I was stationed at. The injury happened during a football game. It was a severe injury and the psychological aspects of not being able to play sports was very mentally draining. I was very depressed due to a torn ACL. My ability to perform my military duties, my ability to play sports, and even my overall ability to walk was affected and still is to this day. This was a life altering injury and had this not happened, I am quite sure I would have had a long military career. Prior to my injury I had a strong military career. I was meritoriously promoted from private to private first class was unable to perform my military duties and I was very depressed [sic]. I got into a disagreement with my staff sergeant and was written up for disrespect towards a staff NCO. I was offered a plea bargain for discharge, rather than going to a court-martial trial. I was not in a good mental space to make this decision. To this day I walk with a limp, I cannot run, and suffer from stress due to my inability to perform certain tasks because of this injury.

I have been employed with the [REDACTED] [REDACTED] [REDACTED] for 27 years. I am proud of my service.

See enclosure (1).

q. Petitioner's application and records were reviewed by a qualified mental health professional, who provided an advisory opinion (AO) for the Board's consideration. The AO's author found no evidence that Petitioner was diagnosed with a mental health condition during his military service or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. While she did find evidence of Petitioner's knee injury, she found none of any mental health condition. The AO found that Petitioner's personal statement (see paragraph 3p above) was not sufficiently detailed to establish clinical symptoms in service or to provide a nexus to his misconduct, particularly given pre-service misbehavior which appears to have carried over into his service. Accordingly, the AO found insufficient evidence of a mental health condition that may be attributed to Petitioner's military service, or to attribute his misconduct to any mental health condition.<sup>8</sup> See enclosure (13).

#### MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that partial equitable relief is warranted in the interests of justice.

The Majority found no error or injustice in Petitioner discharge under OTH conditions at the time that it was administered. There were no questions raised regarding the validity of the misconduct of which Petitioner was charged, or regarding any of his three previous NJPs. The frequency and severity of that misconduct was more than sufficient to justify the characterization of Petitioner's service. There were also no questions raised regarding the process by which Petitioner was discharged. Petitioner requested the discharge with full knowledge of the

---

<sup>8</sup> A copy of the AO was sent to Petitioner for comment by letter dated 15 March 2023, but Petitioner provided no response.



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

potential consequences, after consulting with counsel. Accordingly, the Majority found no errors or injustice in Petitioner's discharge at the time that it was administered.

Because Petitioner based his claim in whole or in part upon his claimed mental health conditions, the Majority reviewed his application in accordance with the guidance of reference (b). Accordingly, the Majority applied liberal consideration to Petitioner's claim that he was depressed as a result of his inability to participate in sports due to his knee injury, and the effect that his mental health may have had upon the misconduct for which he was discharged. Even applying very liberal consideration, however, the Majority found no support for Petitioner's claim that the mental health concerns that he developed as a result of his knee injury and resultant inability to participate in sports contributed to his misconduct and the end of his career. In this regard, the Majority does not doubt that Petitioner may have been depressed as a result of the loss of his physical abilities due to his knee injury, but simply found no nexus between that depression and the misconduct for which he was discharged. Petitioner's pattern of misconduct developed long before his injury. He came into the Marine Corps only pursuant to a waiver which was necessitated by a history of pre-service criminal conduct, and he was counseled for misconduct before the knee injury occurred. Further, Petitioner provided a credible contemporaneous explanation for the loss of his motivation to continue serving in support of his discharge request which did not include mention of his knee injury (see enclosure (8)), which raises significant doubts regarding his present claim that he would have enjoyed a long military career but for his injury. Accordingly, the Majority did not believe that any mental health conditions excused or mitigated the misconduct for which Petitioner was discharged.

In addition to applying liberal consideration to Petitioner's claimed mental health condition(s) and the effect that they may have had upon his misconduct in accordance with reference (b), 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 (c). In this regard, the Majority considered, among other factors, Petitioner's in-service knee injury and the lasting impact that it has had upon his capabilities; the relatively minor and non-violent nature of Petitioner's misconduct; Petitioner's post-service record of employment, as reflected in his claim to have been employed by the [REDACTED] for 27 years; the rehabilitation that Petitioner's post-service success suggests; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon the totality of the circumstances, the Majority determined that an upgrade of Petitioner's characterization of service to general (under honorable conditions) is warranted in the interests of justice.

The Majority considered whether an upgrade of Petitioner's characterization of service to fully honorable, as he requested, was warranted in the interests of justice, but determined that the mitigating circumstances did not nearly so significantly outweigh the frequency and severity of Petitioner's misconduct to warrant such extraordinary relief.

#### 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:

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 27 August 1990 was characterized as "General (under honorable conditions)." All other entries currently reflected on Petitioner's 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 material error or injustice warranting relief.

The Minority concurred with the Majority conclusion above that there was no error or injustice in Petitioner's discharge from the Marine Corps under OTH conditions at the time that it was administered.

The Minority also concurred with the Majority conclusion above that, even applying very liberal consideration to his claim, there is insufficient evidence that Petitioner's misconduct was excused or mitigated by any mental health conditions.

Like the Majority, 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 (c). In this regard, the Minority considered the same potentially mitigating factors as did the Majority, but reached a different conclusion. Specifically, the Minority simply did not believe that the potentially mitigating circumstances outweighed the frequency and severity of Petitioner's misconduct to warrant any equitable relief. Petitioner stated that he has worked for the [REDACTED] for 27 years, but he provided nothing other than his statement to document any post-service accomplishments or contributions to society which might justify such equitable and generous relief. Petitioner's in-service misconduct clearly warranted the service characterization that he received. The Minority was not opposed to upgrading this service characterization based upon his post-service accomplishments, but needed to see more than a simple statement that he had been employed for 27 years to justify such equitable relief.

#### 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.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

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

6/22/2023



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 Approve (Relief Denied – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)

8/15/2023

