



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

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Docket No: 4619-23
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) 10 U.S.C. § 1552
(b) 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
(2) DD Form 214
(3) Petitioner's Letter, 26 February 1974
(4) Standard Form 513, Clinical Record – Consultation Sheet, 9 April 1974
(5) Standard Form 513, Clinical Record – Consultation Sheet, 11 April 1974
(6) NAVMC 118(3), Record of Service
(7) NAVMC 118(12), Offenses and Punishments
(8) DD Form 458, Charge Sheet, 19 February 1975
(9) Petitioner's Memo 17█ 1900, subj: Administrative Discharge for the good of the service; request for, 21 February 1975
(10) Petitioner's Defense Counsel's Memo 17█ 1900, subj: Request for Discharge for good of service; case of [Petitioner], 21 February 1975
(11) █ Memo 17█ 1900, subj: Request for administrative discharge for the good of the service; case of [Petitioner], 25 February 1975
(12) █ Memo 17█ 1900, First Endorsement on Enclosure (9), subj: Request for administrative discharge for the good of the service; case of [Petitioner], 5 March 1975

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 general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 28 August 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 reference (b).

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

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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 limitations and consider Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 14 January 1974. See enclosure (2).

d. By letter dated 26 February 1974, Petitioner wrote a letter to his Congressman stating that he did not believe himself to be physically fit and requesting a medical discharge from the Marine Corps.¹ See enclosure (3). Although Petitioner had subsequently written another letter to his Congressman indicating his desire to withdraw his discharge request, this inquiry and Petitioner's claimed medical issues prompted his referral for physical examination. On 9 April 1974, a medical examination found no evidence of any organic heart disease and that Petitioner was fit for full duty with a functional heart murmur.² See enclosure (4).

e. On 11 April 1974, two days after he was found fully fit for duty, Petitioner was referred for a psychiatric evaluation due to symptoms of depression. He was reported to be disappointed by the fact that he was found fit for full duty, and was described as unhappy and unsure that he wanted to be a Marine.³ The evaluating provider noted that Petitioner seemed to be seeking a discharge from the Marine Corps. No indication for any psychiatric diagnosis or disposition was found during this evaluation. See enclosure (5).

f. On or about 11 September 1974, Petitioner reported for duty at [REDACTED], in [REDACTED]. See enclosure (6).

g. On 11 October 1974, Petitioner received nonjudicial punishment (NJP) for an unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ).⁴ He received 14 days of extra duty and restriction. See enclosure (7).

h. On 8 November 1974, Petitioner received his second NJP for drunk and disorderly conduct in violation of Article 134, UCMJ;⁵ being verbally disrespectful to a superior commissioned officer in violation of Article 89, UCMJ;⁶ willfully disobeying a lawful order

¹ Petitioner claimed to have had bad chest pains and to have passed out twice during physical exercises and collapsed three times while running. He also claimed to have a history of Rheumatic Fever and a heart murmur, and stated that he had seen the doctor at the Marine Corps Recruiting Depot five or six times but was sent back to duty every time. This letter was apparently prompted by Petitioner's wife, who previously sent a letter dated 7 February 1974 to the same Congressman seeking Petitioner's discharge from the Marine Corps.

² The record of this examination notes that the concern for Petitioner's health apparently came from his wife, who had not seen Petitioner since 13 January 1974 and was "quite lonely for him."

³ The record of this evaluation notes that Petitioner stated that he wife tried to get him out of the Marine Corps on medical grounds.

⁴ Petitioner was allegedly UA for approximately 11 hours on 5 October 1974.

⁵ Petitioner was allegedly drunk and disorderly on 7 November 1974.

⁶ Petitioner allegedly stated to a Second Lieutenant, "I'm in civilian clothes, on liberty and don't have to listen to you or obey your orders," or words to that effect.

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from a superior commissioned officer in violation of Article 90, UCMJ;⁷ and willfully disobeying a lawful order from a superior noncommissioned officer in violation of Article 91, UCMJ.⁸ He was required to forfeit \$84 per month for one month, and to perform 14 days of extra duty. See enclosure (7).

i. Petitioner commenced a period of UA on 26 November 1974, which terminated upon his surrender to military authorities on 19 January 1975. See enclosure (7).

j. On 19 February 1975, Petitioner was charged with the UA referenced in paragraph 3i above in violation of Article 86, UCMJ. See enclosure (8).

k. By memorandum dated 21 February 1975, Petitioner requested an administrative discharge for the good of the service in lieu of trial by court-martial. In making this request, Petitioner acknowledged that he could receive an undesirable discharge under other than honorable (OTH) conditions without the benefit of an administrative discharge board. See enclosure (9). Petitioner's detailed defense counsel submitted a separate memorandum in support of Petitioner's request for discharge in lieu of trial by court-martial. In this memorandum, Petitioner's defense counsel reported that Petitioner stated that he disliked the treatment he had received in the Marine Corps, and that he would commit more offenses if allowed to return to duty. Accordingly, Petitioner's defense counsel opined that further rehabilitative efforts upon his client would be unsuccessful. See enclosure (10).

l. By memorandum dated 25 February 1975, the convening authority's Staff Judge Advocate (SJA) concurred with the recommendation of Petitioner's defense counsel that Petitioner's request for administrative discharge for the good of the service in lieu of trial by court-martial be approved. The SJA indicated that Petitioner's battalion commander also concurred with this course of action and recommended approval of the Petitioner's request. See enclosure (11).

m. By memorandum dated 5 March 1975, the convening authority approved Petitioner's request for discharge for the good of the service, and directed that he receive an undesirable discharge under OTH conditions. See enclosure (12).

n. On 19 March 1975, Petitioner was discharged from the Marine Corps under OTH conditions for the convenience of the government in lieu of trial by court-martial. See enclosure (2).

o. Petitioner claims that he was on emergency leave because his wife was told that she might have cancer. The 10 days of emergency leave that he was granted was not enough time to receive the results of her tests, and his request for an extension was denied so he went UA. He claims that he surrendered himself after receiving the test results, and that he loved serving in the Marine Corps. He further claims that he was given no consideration, and was given a choice

⁷ Petitioner allegedly disobeyed an order from the same officer referenced in footnote 6 above to remain seated and keep quiet.

⁸ Petitioner allegedly disobeyed an order from a Staff Sergeant to accompany the Staff Duty Noncommissioned Officer and go to bed.

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between significant jail time or the undesirable discharge and going home to be with his wife. See enclosure (1).

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 undesirable discharge under OTH conditions for the good of the service at the time that it was administered. There appears to be no controversy regarding the legitimacy of Petitioner's UA. It was appropriately documented in Petitioner's records at the time, and Petitioner essentially admits to it by providing an explanation for his conduct. Even taking as true his assertion that his chain of command refused to provide him additional emergency leave while awaiting his wife's cancer test results, this would not establish a defense to his misconduct. It also appears that all of the due process requirements were met for Petitioner's discharge. Petitioner's discharge was initiated upon his own request with the advice and assistance of counsel. It is apparent from the record that this discharge was Petitioner's desire, as his defense counsel reported at the time that he promised to commit more misconduct if not so discharged. Finally, Petitioner's misconduct certainly warranted a discharge under OTH conditions. Petitioner's UA alone was sufficient to justify such a discharge characterization, and when combined with his other misconduct it would be inaccurate to characterize Petitioner's service in any other way. Additionally, an OTH characterization of service is the default characterization for the discharge for the good of the service in lieu of trial by court-martial that Petitioner requested and was granted. Accordingly, there was no error or injustice in Petitioner's undesirable discharge under OTH conditions at the time that it was administered.

In addition to considering the circumstances of Petitioner's undesirable discharge at the time that it was administered, 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 (b). In this regard, the Majority considered, among other factors, Petitioner's claim that he went UA because his chain of command refused to grant any additional emergency leave while awaiting his wife's cancer test results; Petitioner's contention that he was granted no consideration, and was left with only the obvious choice of submitting his request for administrative discharge for the good of the service and going home to his wife, or facing the possibility of significant jail time; Petitioner's claim that he loved serving in the Marine Corps; the non-violent nature of the misconduct for which Petitioner was discharged; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Of these factors, the Majority found only the latter two to be particularly persuasive. The Majority was not persuaded by Petitioner's explanation for his misconduct, or his complaint that he was not provided any consideration for either more emergency leave time or upon his return to military custody after his period of UA. However, the Majority did find the OTH discharge characterization to be rather harsh given Petitioner's age and immaturity at the time of his misconduct, and found that no useful purpose is served by continuing to stigmatize him with such a characterization. Accordingly, the Majority believed that a purely equitable upgrade of Petitioner's discharge characterization to general (under honorable conditions) is warranted in the interests of justice.

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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 his service ending on 19 March 1975 was characterized as "Under Honorable Conditions," and that he was issued a General Discharge Certificate. 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 error or injustice warranting relief.

The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's undesirable discharge under OTH conditions for the good of the service at the time that it was administered.

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 (b). In this regard, the Minority considered the same potentially mitigating factors as did the Majority. However, the Minority reached a different conclusion than did the Majority. First, the Minority noted that Petitioner provided no evidence to support his claims regarding the circumstances of his UA. It is the Petitioner's burden to prove the existence of any injustice that he asserts, and his words alone failed to do so. Frankly, even assuming Petitioner's claim in this regard to be entirely accurate even without the evidence to support it, the Minority would have found his chain of command's decision not to extend Petitioner's emergency leave to be reasonable given his record of misconduct in the short time since arriving to his unit and his previous efforts to obtain a discharge from the Marine Corps due to his wife's desires. Petitioner simply was no longer entitled to any benefit of the doubt. The Minority also found that Petitioner was disingenuous with the Board when he claimed to have loved being a Marine. The record reflects that this statement was not true. He made efforts to obtain a discharge from the Marine Corps almost from the moment of his entry, and told both his mental health provider and his detailed defense counsel at the time how dissatisfied he was with the Marine Corps. He also demonstrated his disdain for the Marine Corps through his conduct as a Marine over the course of his short career. Petitioner's lack of candor in this regard in an effort to curry favor with the Board weighed heavily against granting the equitable relief that Petitioner sought for the Minority. Next, the Minority found that Petitioner's misconduct far outweighed all of the mitigating circumstances combined. Petitioner's misconduct was not limited solely to the UA for which court-martial charges were preferred. Within his first two months in his unit, he received NJP twice before going UA prior to reaching three months in tenure. As such, Petitioner's Marine Corps career was characterized by little else than his repeated misconduct. Finally, the Minority noted that Petitioner provided no evidence or even a description of his post-

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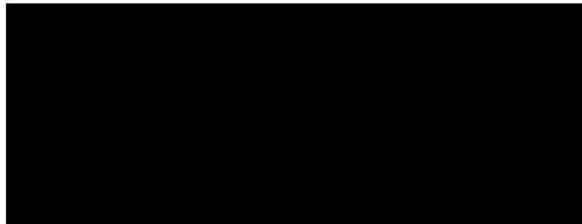
service accomplishments and contributions to society which might justify the equitable relief that he seeks. As there was no error or injustice in Petitioner's discharge at the time that it was administered, it is Petitioner's burden to establish that his post-service accomplishments and contributions to society are of such merit to justify retroactively characterizing his Marine Corps service more favorably than it actually was. As Petitioner provided no such basis for the equitable relief he seeks, the Minority determined that such relief was not warranted 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.

10/21/2023



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant 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.)

10/27/2023

