



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

██████████
Docket No. 7153-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
XXX XX ██████ / ██████ USMC

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 w/attachments
(2) DD Form 214
(3) NAVMC 118(12), Offense and Punishments
(4) NAVMC 118(5), Record of Time Lost, Promotions and Reductions, and Record of Examination for Promotion (1070)
(5) NAVMC 118(9), Combat History – Expeditions – Award Record (1070)
(6) NAVMC 118(3), Record of Service

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 considered Petitioner's allegations of error or injustice on 8 December 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:

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.

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c. Petitioner enlisted in U.S. Marine Corps (USMC) and began a period of active duty service on 24 October 1968. See enclosure (2).

d. On 22 April 1969, Petitioner received non-judicial punishment (NJP) for misbehavior of a sentinel in violation of Article 113, Uniform Code of Military Justice (UCMJ).¹ He was required to forfeit \$10.00 pay per month for one month, but this punishment was suspended for 30 days. See enclosure (3).

e. On 26 August 1969, Petitioner absented himself from his place of duty without authorization, and remained so absent until he surrendered on 30 September 1969. See enclosure (4).

f. On 7 October 1969, Petitioner received his second NJP for the unauthorized absence referenced in paragraph 3e above. He was required to forfeit \$55.00 pay per month for two months; reduced in grade to Private/E-1; and assigned to 30 days of correctional custody.² See enclosure (3).

g. Petitioner participated in combat operations in the [REDACTED] from 29 October 1969 to 9 October 1970. See enclosure (5). He earned relatively high performance marks while deployed in the [REDACTED].³ See enclosure (6).

h. On 15 October 1970, Petitioner was released from active duty early and transferred to the USMC Reserve for the convenience of the government.⁴ His service was characterized as being "Under Honorable Conditions" (i.e., General).⁵ See enclosure (2).

h. Petitioner contends he decided to delay his return to duty after boot camp due to the death of his brother and because he was assisting his parents with financial stress. He further states that he "made [a] stupid decision to except [sic] respnsibility [sic] for another soldiers infractions" while in the [REDACTED], and that he was "deranked" for his actions.⁶ Finally, Petitioner attests that his experience in the military made him the person that he is today, and that his post-service career has included work with the military on government contracts "to assist housing camps and equipment needs." See enclosure (1).

¹ Petitioner was allegedly found by the Regimental Duty Officer with a radio.

² The 30 days of correctional custody was suspended for three months.

³ Petitioner's "duty" and "conduct" ratings for the period from 25 October 1969 to 21 January 1970 were 4.4 and 4.5 respectively; from 1 February 1970 to 31 June 1970 were 4.4 and 4.3 respectively; and from 1 August 1970 to 9 October 1970 were 4.4 and 4.4 respectively.

⁴ The specific reason for Petitioner's release from active duty was "early separation of overseas returnee." Petitioner's final average conduct rating as 3.7. It appears that this average rating was influenced significantly by the rating of 0.0 that he received during his period of UA.

⁵ At the time of Petitioner's release from active duty, an average rating of at least 4.0 was required for a Marine to receive a fully honorable characterization of service. See MARCORPERSMAN (1964 version), par. 13252.

⁶ It is not clear from the record what Petitioner is referring to. His record reflects no misconduct or reduction in rank while deployed in the [REDACTED], and he was ultimately released from active duty at the highest rank he achieved.

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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 in Petitioner's discharge under honorable conditions at the time it was administered. The occurrence of Petitioner's misconduct does not appear to be in question, as both occurrences were adjudicated through NJP at the time and Petitioner admitted to his UA in his application to the Board. At the time of Petitioner's release from active duty, a Marine had to have an average conduct rating no lower than 4.0 in order to have his service characterized as fully honorable. Petitioner's final average conduct rating was only 3.7, which was the result of the 0.0 rating that he received during his period of UA and the relatively short duration of his enlistment which deprived him of sufficient opportunity to overcome that deficiency. Accordingly, the characterization of Petitioner's service as "Under Honorable Conditions" (i.e., General), rather than fully honorable, was appropriate and in accordance with Marine Corps regulations. It appears that Petitioner is mistaken as to the reason that his service was characterized as less than fully honorable. There is no reference in his naval record to any misconduct attributed to him while deployed in the [REDACTED], and he was never "deranked" after his second NJP for UA. Additionally, his favorable conduct ratings throughout his deployment to the [REDACTED] suggests that his claimed "stupid decision to except [sic] respnsibility [sic] for another soldiers infractions" had no adverse impact upon the characterization of his service.

In addition to reviewing the circumstances of Petitioner's discharge for any errors, the Majority also considered the totality of the circumstances to determine whether equitable relief may be warranted in the interests of justice in accordance with reference (b). In this regard, the Majority considered, among other factors, Petitioner's combat service in the [REDACTED], which appears to have been performed honorably; Petitioner's claim that his UA was motivated by the death of his brother and need to help his parents financially; the non-violent and relatively minor nature of the misconduct in Petitioner's naval record; that Petitioner ended his UA voluntarily by returning to boot camp to finish his training and immediately deploy to the [REDACTED] during a time that many Americans were taking extreme measures to avoid wartime military service; that the Marine Corps decided to retain Petitioner and deploy him to combat upon his return from UA; Petitioner's reported post-service record of employment, which included work on government contracts serving the military; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since his discharge. The Majority found the combined weight of these mitigating factors to far outweigh the relatively minor misconduct which contributed to the characterization of Petitioner's service as less than fully honorable. Accordingly, the Majority believed that equitable relief is warranted in the interests of justice to recharacterize Petitioner's service as fully honorable.

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:

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That Petitioner be issued a new DD Form 214 reflecting that his active duty service ending on 15 October 1970 was characterized as "Honorable," and that he was issued an Honorable Discharge Certificate. All other entries currently reflected on Petitioner's DD Form 214 are to remain unchanged.

That Petitioner be issued an Honorable Discharge Certificate.

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 in the characterization of Petitioner's service as "Under Honorable Conditions" (i.e., General) at the time of his release from active duty.

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 circumstances as did the Majority, but reached a different conclusion. Specifically, the Minority found that Petitioner failed to provide the Board with sufficient information regarding his post-service activities to justify the extraordinary relief that he requested. As there was no error in the characterization of Petitioner's service, it was his burden to convince the Board that the present circumstances renders the continuing characterization of that service as less than fully honorable constitutes an injustice. This is a high burden, and Petitioner provided the Board with virtually no information regarding his post-service activities or contributions to his community or society upon which to make such a finding. Additionally, the Minority noted that Petitioner alluded to an unspecified event which occurred while in the [REDACTED] to which he attributed his characterization of service. While it is obvious that this event was not the reason for Petitioner's service characterization, the Minority was reluctant to grant Petitioner the extraordinary relief that he requested without some understanding of the details of this incident.

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.

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

1/17/2024



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.)

1/20/2024

