



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

[REDACTED]  
Docket No. 10609-23  
Ref: Signature Date

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

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

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  
(d) MCO P1900.16F, Marine Corps Retirement and Separation Manual (Short Title: MARCORSEPMAN), 30 May 2001

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 214  
(3) NAVMC 10132, Unit Punishment Book, 14 June 2005  
(4) NAVMC 118(11), Administrative Remarks, 15 June 2005  
(5) NAVMC 118(11), Administrative Remarks, 27 June 2005  
(6) NAVMC 118(11), Administrative Remarks, 27 June 2005  
(7) MCTFS Screenshot, Individual Separation Information  
(8) Patient Movement Request  
(9) Standard Form 600, Health Record – Chronological Record of Medical Care, 14 December 2005  
(10) [REDACTED] Report of Medical Board, 7 March 2006  
(11) Petitioner's Medical Record Entry of 17 August 2006  
(12) NAVMC 10132, Unit Punishment Book, 14 April 2006  
(13) NAVMC 118(11), Administrative Remarks, 26 April 2006 and 24 May 2006  
(14) NAVMC 118(11), Unit Punishment Book, 8 May 2006  
(15) [REDACTED] CO Memo 1910 Adj/jtn, subj: Notification of Administrative Separation Proceedings, 6 June 2006  
(16) Petitioner's Memo 1910 Adj/jtn, subj: Acknowledgment of my Rights to be Exercised or Waived during Separation Proceedings, 14 June 2006  
(17) [REDACTED] Memo 1910 9B, subj: Administrative Discharge Board Report: Findings and Recommendations in the case of [Petitioner], 31 August 2006 (with Administrative Separation Board Record of Proceedings)

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(18) NAVMC 10132, Unit Punishment Book, 11 September 2006

(19) [REDACTED] CO Memo 1910 9A, First  
Endorsement on Enclosure (17), subj: Administrative Separation Proceedings in the  
case of [Petitioner], 19 September 2006

(20) BCNR Memo Docket No: NR20230010609, subj: Advisory Opinion ICO  
[Petitioner], 10 May 2024

(21) Response to Advisory Opinion, in the matter of [Petitioner], before the Board for  
Corrections [sic] of Naval Records (BCNR), Request for Correction of Military  
Records, *undated*

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 and that his narrative reason for separation be changed to "Secretarial Authority."

2. The Board reviewed Petitioner's allegations of error or injustice on 28 June 2024 and, pursuant to its governing policies and procedures, determined that the corrective action indicated blow should be taken on Petitioner's naval record 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 references (b) and (c).

3. Having reviewed all 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 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 4 October 2004. See enclosure (2)

d. On 29 March 2005, Petitioner commenced a period of unauthorized absence (UA) which continued until 19 April 2005.<sup>1</sup> See enclosure (3).

e. On 14 June 2005, Petitioner received nonjudicial punishment (NJP) for UA in violation of Article 86, Uniform Code of Military Justice (UCMJ).<sup>2</sup> He was required to forfeit \$23 pay per month for one month and was restricted and required to perform extra duty for 14 days. See enclosure (3).

f. On 15 June 2005, Petitioner was formally counseled in writing regarding the UA referenced in paragraph 3d above. He was warned that further failures to comply with the

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<sup>1</sup> Petitioner's father testified during Petitioner's administrative separation hearing that this UA was due to relationship issues with his fiancée.

<sup>2</sup> Petitioner was charged with the UA referenced in paragraph 3d above.

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standards of conduct and all military regulations, or further violations of the UCMJ, may result in administrative separation. Petitioner elected not to make a statement in response to this counseling. See enclosure (4).

g. On or about 16 June 2005, Petitioner disobeyed the orders of the Duty Non-Commissioned Officer (NCO) to get off of his cell phone while performing extra duties. He was also insubordinate with the Duty NCO when told to take off his CD player hanging around his neck while in uniform and on restriction. Specifically, he told the Duty NCO that he was off duty and did not have to get off the phone or take off the CD player. He was also late in reporting for check in. See enclosure (5).

h. On 17 June 2005, Petitioner failed to check in with the Duty NCO for restriction as required. He was located in his room talking on a cell phone, and claimed that he lost track of time. See enclosure (6).

i. On 27 June 2005, Petitioner was formally counseled for the misconduct referenced in paragraphs 3g and 3h above.<sup>3</sup> He elected not to make a statement in response to either counseling. See enclosures (5) and (6).

j. Petitioner was deployed to [REDACTED] in support of [REDACTED] on or about 8 September 2005. See enclosure (7).

k. On 9 December 2005, a 7-ton refueling truck being driven by Petitioner rolled over after being struck by an enemy improvised explosive device. Petitioner suffered a head laceration and a concussion as a result of this incident. As a result of this accident and the effects of the concussion, Petitioner was evacuated to [REDACTED] Medical Center in [REDACTED]. See enclosure (8).

l. On 14 December 2005, Petitioner presented for follow-up evaluation for his concussion symptoms. He reported that he was doing much better, did not need pain medications, and that his memory and energy were improving. See enclosure (9).

m. On 7 March 2006, Petitioner underwent a medical board at Naval Medical Center (NMC) [REDACTED], due to continuing symptoms from the concussion referenced in paragraph 3k above.<sup>4</sup> The medical board found that Petitioner suffered from post traumatic migraine associated with dizziness as a result of the concussion. As a result, the medical board opined that it was impossible for Petitioner to continue on active duty in the Marine Corps. See enclosure (10).

n. Petitioner was diagnosed with and began to receive treatment for post-traumatic stress disorder (PTSD) at the NMC [REDACTED] Psychiatric Clinic in March 2006.<sup>5</sup> See enclosure (11).

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<sup>3</sup> Enclosures (5) and (6) recorded the date of the misconduct referenced in paragraphs 3g and 3h as 16 and 17 May 2005 respectively. However, given the timing of Petitioner's NJP and the date of enclosures (5) and (6), the Board presumed the month recorded on these counseling statements to be a scrivener's error.

<sup>4</sup> Sometime after 14 December 2005, Petitioner was returned to the continental United States for further treatment and recovery. He continued to report some trouble with memory, severe headaches, and severe dizziness.

<sup>5</sup> Petitioner was also diagnosed with a mood disorder (not otherwise specified).

o. On 14 April 2006, Petitioner received his second NJP for two specifications of UA in violation of Article 86, UCMJ.<sup>6</sup> He was required to forfeit \$333 pay per month for one month, and to be restricted and perform extra duty for 14 days.<sup>7</sup> See enclosure (12).

p. On 26 April 2006, Petitioner was formally counseled in writing for his UAs of 28 and 29 March 2006 (see footnote 6). This counseling warned him that further misconduct could result in adverse action, to include administrative separation. Petitioner elected not to make a statement in response. See enclosure (13).

q. On 8 May 2006, Petitioner received his third NJP for UA in violation of Article 86, UCMJ.<sup>8</sup> He was required to forfeit \$333 pay per month for one month and was restricted for 45 days. See enclosure (14).

r. On 24 May 2006, Petitioner was formally counseled in writing for the UA referenced in paragraph 3q above. He acknowledged that he was being processed for administrative separation due to misconduct and elected not to provide a statement in response. See enclosure (13).

s. By memorandum dated 6 June 2006, Petitioner was formally notified that he was being processed for administrative separation from the Marine Corps for misconduct due to a pattern of misconduct. This notice informed Petitioner that he could be discharged under other than honorable (OTH) conditions and that that would be his command's recommendation. See enclosure (15).

t. By memorandum dated 14 June 2006, Petitioner acknowledged receipt of the notice referenced in paragraph 3s above and elected to exercise his right to an administrative separation board. See enclosure (16).

u. On 31 August 2006, an administrative separation board convened to consider Petitioner's case. Petitioner was represented by counsel at this hearing but did not testify. After hearing all of the testimony and reviewing all of the evidence, the administrative separation board unanimously found that the preponderance of the evidence established the alleged pattern of misconduct and recommended that Petitioner be separated from the Marine Corps under OTH conditions. See enclosure (17).

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<sup>6</sup> Petitioner was alleged to have been absent from his place of duty for approximately 30 minutes on 28 and 29 March 2006, respectively. Specifically, he failed to report at 0730 as required and was not accounted for until 0800 on each day. According to testimony delivered during his subsequent administrative separation board, Petitioner reported that he did not hear his alarm and overslept.

<sup>7</sup> All punishments except for the 14 days of restriction were suspended.

<sup>8</sup> Petitioner was allegedly absent from his room at the Naval Medical Center [REDACTED] from approximately 1800 hours on 30 April 2006 until approximately 0920 hours on 1 May 2006. According to testimony delivered during his subsequent administrative separation board, Petitioner reported that he was in a Navy female's room watching movies. He was not charged for a violation of orders despite being in the female's barracks room after 2200 hours.

v. On 11 September 2006, Petitioner received his fourth NJP for UA in violation of Article 86, UCMJ;<sup>9</sup> disrespect toward a superior NCO in violation of Article 91, UCMJ;<sup>10</sup> and for violating a lawful general order by wearing an earring in violation of Article 92, UCMJ. He was restricted for 20 days and reduced in grade to E-1. See enclosure (18).

w. On 19 September 2006, the separation authority approved the administrative separation board's findings and recommendation, and directed that Petitioner be discharged from the Marine Corps under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (19).

x. On 20 September 2006, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (2).

y. Petitioner, through counsel, asserts the existence of a material error in Petitioner's OTH discharge for misconduct in that Petitioner's medical condition was not fully considered, and that he is entitled to liberal consideration in accordance with reference (b). Petitioner's counsel further notes that Petitioner's first sergeant at the time of his discharge concluded that a general (under honorable conditions) characterization of service would be more appropriate under the circumstances. Finally, Petitioner's counsel asserts a material injustice in that the characterization of service assigned was unduly stigmatizing to Petitioner. See enclosure (1).

z. Because Petitioner based his claim for relief in whole or in part upon his combat-related traumatic brain injury (TBI) and PTSD, his application and records were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board's consideration in accordance with reference (a). The AO noted that there is evidence of TBI and diagnoses of PTSD and other mental health concerns during his military service, but insufficient evidence in the record to establish a nexus between Petitioner's mental health and all of his misconduct since some of his misconduct predated his combat deployment. She did, however, find it possible that Petitioner's disobedience and disrespect could be considered behavioral indicators of irritability associated with TBI or PTSD. The licensed clinical psychologist ultimately opined that there is in-service evidence of TBI and diagnoses of PTSD and another mental health condition that may be attributed to his military service, but insufficient evidence to attribute all of his misconduct to his mental health conditions. See enclosure (20).

aa. Petitioner's counsel provided a response to the AO referenced in 3z above. Specifically, Petitioner's counsel noted that the vast majority of Petitioner's misconduct occurred and that his command did not contemplate separation proceedings until after his deployment to [REDACTED]. As such, Petitioner's counsel argues that "it is not essential for the [Petitioner's] service-connected mental health issues and TBI to mitigate all of the misconduct, but rather that it mitigates [what] was the impetus for the separation proceedings." Petitioner's counsel also asserted that Petitioner is entitled to "lenient review" pursuant to reference (b). See enclosure (21).

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<sup>9</sup> Petitioner was allegedly UA from 6 September 2006 to 8 September 2006.

<sup>10</sup> Petitioner was charged with "neglecting customs and courtesies and showing rudeness and disdain" for a superior NCO then in the execution of his office.

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 interest of justice.

The Majority found no error in Petitioner's discharge under OTH conditions for a pattern of misconduct when it was administered. In accordance with paragraph 6210.3 of reference (d), a Marine could be administrative discharged for misconduct due to a pattern of misconduct with at least two incidents of misconduct occurring within a single enlistment, regardless of the relative severity of the individual acts. However, separation processing may not be initiated on this basis until the Marine has been counseled per paragraph 6105 of reference (d). Petitioner had far more than two acts of misconduct during his relatively short enlistment, and he was formally counseled on multiple occasions before administrative separation proceedings were initiated. It appears from the record that all procedural requirements were satisfied for Petitioner's discharge. He was properly notified that he was being processed for administrative separation due to his pattern of misconduct, informed of the acts constituting this pattern, and warned that he could be separated under OTH conditions. Petitioner exercised his right to an administrative separation board, which unanimously found that the preponderance of the evidence supported the alleged pattern of misconduct and recommended that Petitioner be administrative discharged from the Marine Corps under OTH conditions before the separation authority directed his separation on those terms. Finally, an OTH characterization of service was authorized because Petitioner was notified via the administrative separation board procedure, and was appropriate under the circumstances given the pervasive nature of Petitioner's pattern of misconduct.

Because he based his request for relief in whole or in part upon his claimed combat-related TBI and PTSD condition, Petitioner's application was reviewed in accordance with the guidance of references (a) and (b). Accordingly, the Board reviewed Petitioner's claim with liberal consideration that PTSD and/or TBI potentially contributed to the circumstances resulting in his discharge or to the OTH characterization of that discharge in accordance with reference (a), and applied liberal consideration to the existence of Petitioner's claimed TBI and PTSD condition and the effect that they may have had upon his conduct in accordance with reference (b). In this regard, the Majority found sufficient evidence to conclude that Petitioner suffered from combat-related TBI and PTSD during his service in the Marine Corps. The Majority need not have applied liberal consideration to reach this conclusion, as these conditions were apparent from Petitioner's in-service medical records. Applying liberal consideration, the Majority also found sufficient evidence to conclude that these conditions contributed to Petitioner's post-deployment misconduct. Several witnesses testified during Petitioner's administrative separation board hearing that these conditions and/or the medications that he was prescribed to treat these conditions adversely affected Petitioner's decision making and thought process at the time of his misconduct. Additionally, the AO noted that Petitioner's insubordination could possibly be attributed to irritability associated with TBI or PTSD. As Petitioner would not have been discharged for a pattern of misconduct absent the post-deployment misconduct which may have been influenced by his combat-related TBI and PTSD, the Majority found that these conditions likely did contribute to the circumstances resulting in his discharge and OTH characterization of

service. For the same reason, the Majority also found that Petitioner's post-deployment misconduct was mitigated by these conditions.

In addition to applying liberal consideration to Petitioner's TBI and PTSD condition and the impact that those conditions may have had upon his discharge and conduct in accordance with references (a) and (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, the mitigating effect of Petitioner's TBI and PTSD condition upon much of the misconduct for which Petitioner was discharged, as discussed above; the totality of Petitioner's service, to include his combat service in Iraq; that Petitioner suffered a TBI and subsequently developed PTSD due to enemy action in Iraq, and presumably continued to suffer the effects of these conditions after his discharge; that Petitioner's first sergeant recommended that Petitioner be discharged with a more favorable general (under honorable conditions) characterization of service during Petitioner's administrative separation board hearing; the relatively minor and non-violent nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon these mitigating factors, the Majority determined that equitable relief is warranted in the interests of justice. Specifically, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) and his narrative reason for separation changed to "Secretarial Authority" to mitigate the stigma of his discharge.

Although the Majority found the mitigating circumstances to sufficiently outweigh the severity of Petitioner's misconduct to justify a equitable upgrade of his characterization of service to general (under honorable conditions), it did not find those mitigating circumstances to so significantly outweigh the severity of Petitioner's misconduct to justify the extraordinary relief of an upgrade of his characterization of service to fully honorable. In this regard, the Majority noted that only Petitioner's post-deployment misconduct was mitigated by his TBI and PTSD condition. The most serious misconduct amongst Petitioner's pattern of misconduct was the 21-day UA for which he received his first NJP. Petitioner also engaged in several acts of insubordination and disobedience while serving the restriction imposed by the NJP, the timing of which is an aggravating factor. This unmitigated misconduct alone was sufficient to justify the characterization of Petitioner's service as less than 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 in the interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 20 September 2006 was characterized as "General (under honorable conditions)"; that his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN Par 6214"; and that his separation code was "JFF1." All other entries on Petitioner's current DD Form 214, to include his reentry code, are to remain unchanged.

That a copy of this report of proceedings be filed in Petitioner's naval record.

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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 also determined that equitable relief is warranted in the interests of justice.

The Minority concurred with the Majority conclusion in all regards except with as to the scope of equitable relief warranted. Specifically, the Minority did not find the mitigating circumstances to so significantly outweigh the severity of Petitioner's pattern of misconduct to justify the change to Petitioner's narrative reason for separation recommended by the Majority. The Minority reached this conclusion for the same reason that the Majority found that an upgrade of Petitioner's characterization of service to fully honorable was not warranted. The Minority simply did not find the mitigating circumstances to so significantly outweigh the severity of Petitioner's pattern of misconduct to justify a purely equitable correction to his naval record to reflect an inaccurate reason for this discharge. In this regard, the Minority noted that Petitioner's pre-deployment misconduct alone could have justified his discharge for a pattern of misconduct.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record in the interest of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 20 September 2006 was characterized as "General (under honorable conditions)." All other entries on Petitioner's current DD Form 214, to include his narrative reason for separation and reentry code, are to remain unchanged.

That a copy of this report of proceedings be filed in Petitioner's naval record.

That no further 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.

8/22/2024



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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.)
- X MINORITY Recommendation Approved (Partial Relief – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)
- \_\_\_ Petitioner’s Request Approved (Full Relief – I generally concur with the Majority conclusion, but do not believe that the relief recommended by the Majority goes far enough to serve the interests of justice. Specifically, I found that the mitigating circumstances did so significantly outweigh the severity of Petitioner’s misconduct to justify the equitable upgrade of his characterization of service to fully honorable. Accordingly, I direct the relief recommended by the Majority above, except that Petitioner’s characterization of service shall be changed to “Honorable” and his reentry code shall be changed to “RE-1.” Petitioner shall also be issued an Honorable Discharge Certificate.
- \_\_\_ Board Recommendation Disapprove (Deny Relief – I do not concur with the Board’s conclusion. Specifically, I found that the mitigating circumstances did not outweigh the severity of Petitioner’s pattern of misconduct, and that equitable relief is therefore not warranted in the interests of justice. Accordingly, I direct that no corrective action be taken on Petitioner’s naval record.)

