



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

██████████
Docket No. 1364-24

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/enclosures
(2) DD Form 214
(3) NAVMC 10132, Unit Punishment Book, 15 December 2010
(4) NAVMC 10132, Unit Punishment Book, 19 May 2011
(5) DD Form 2707, Confinement Order, 24 June 2011
(6) DD Form 2718, Inmate's Release Order, 30 June 2011
(7) NAVMC 10132, Unit Punishment Book, 31 January 2012
(8) NAVMC 10132, Unit Punishment Book, 23 October 2012
(9) ██████████ CO Memo 1000 S-1, subj: Notification of Separation Proceedings, 3 December 2012
(10) Petitioner's Memo 1000 S-1, subj: Acknowledgement [sic] of my Rights to be Exercised or Waived during Separation Proceedings, 3 December 2012 (with rebuttal statement)
(11) ██████████ CO Memo 1000 S-1, subj: Recommendation for Administrative Separation ICO [Petitioner], 3 December 2012
(12) ██████████ CO Memo 1900 S-1, First Endorsement on Enclosure (11), subj: Recommendation for Administrative Separation in the case of [Petitioner], 11 January 2013
(13) ██████████ Memo 1910 SJA, Second Endorsement on Enclosure (12), subj: Administrative Separation in the case of [Petitioner], 14 February 2013
(14) Naval Discharge Review Board (NDRB) Discharge Review Decisional Document, Docket No. ██████████

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 and that his narrative reason

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for separation (and corresponding separation code) be changed to reflect "Secretarial Authority."¹

2. The Board reviewed Petitioner's allegations of error or injustice on 16 February 2024 and, pursuant to its governing policies and procedures, determined that the correction action indicated below should be taken 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 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 June 2010. See enclosure (2).

d. On 15 December 2010, Petitioner received nonjudicial punishment (NJP) for unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ).² He was reduced in grade to E-1; required to forfeit \$361.50 pay per month for two months; and restricted for 60 days. See enclosure (3).

e. On 19 May 2011, Petitioner received his second NJP for larceny of government property in violation of Article 121, UCMJ.³ He was restricted and required to perform extra duties for 45 days, and required to forfeit half of his pay for two months. See enclosure (4).

f. On 24 June 2011, Petitioner was placed in pretrial confinement after breaking the restriction associated with his second NJP described in paragraph 3e above. In conjunction with this confinement he underwent a medical examination which found him fit for confinement, but which also resulted in a recommendation for a psychological evaluation due to his suicidal ideations. He was released from confinement after the Initial Review Officer determined that further confinement was not required. See enclosures (5) and (6).

g. On 1 June 2012, Petitioner received his third NJP for failing to go to his prescribed place of duty in violation of Article 86, UCMJ.⁴ He was required to forfeit half of his pay for two months, but this punishment was suspended for six months. See enclosure (7).

¹ Petitioner specifically requested that his characterization of service be upgraded to honorable, but offered an upgrade to general (under honorable conditions) as an alternative.

² Petitioner was charged with UA from 0730 on 13 December 2010 until 0030 on 15 December 2010. He was still in his Initial Entry Training at the ██████████ at ██████████, ██████████, at the time of this misconduct.

³ Petitioner was charged with stealing a Combat Fighting Knife, with a value of approximately \$130, from a unit armory cage.

⁴ Petitioner was charged with failing to report to the officer-of-the-day duty hut on 4 June 2011.

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h. On 23 October 2012, Petitioner received his fourth NJP for failing to go to his appointed place of duty in violation of Article 86, UCMJ.⁵ He was required to forfeit \$347 pay and to perform extra duties for 14 days, and restricted for 14 days.⁶ See enclosure (8).

i. By memorandum dated 3 December 2012, Petitioner was notified of his command's intent to recommend his discharge from the Marine Corps due to his pattern of misconduct. See enclosure (9).

j. By memorandum dated 3 December 2012, Petitioner acknowledged receipt of the notification referenced in paragraph 3i above and elected to waive his rights to consult with counsel and to request a hearing before an administrative separation board. He did, however, exercise his right to submit a statement in rebuttal to the proposed separation. In this five-page statement, he provided context for and/or denied certain of the alleged acts of misconduct constituting his pattern of misconduct. Specifically, he denied having stolen the combat fighting knife which was the subject of his second NJP, explaining that he had simply placed the knife on his belt so that he would not forget to which pile it belonged when he was called away to another task while inventorying and organizing weapons in the armory, and neglectfully departed the armory with it remaining on his belt after being unexpectedly released from the duty early. He further explained that his first UA (see paragraph 3d above) occurred when he flew home without authority to deal with personal issues involving his girlfriend, and attributed his fourth UA to the unanticipated loss of power when he was staying with his girlfriend off base the night before the event from which he was absent. Petitioner also described what he believed to be ongoing and unfair harassment by his superior noncommissioned officers which he claimed to have denied him a fair opportunity to succeed, and asserted that he deserved better than an other than honorable (OTH) characterization of service. See enclosure (10).

k. After Petitioner waived his right to an administrative separation board and provided his statement in rebuttal to the proposed separation, as discussed in paragraph 3j above, Petitioner's battalion commander recommended that Petitioner be administratively discharged from the Marine Corps under OTH conditions for a pattern of misconduct. In making this recommendation, Petitioner's commander stated that he had personally interviewed Petitioner and that he displayed remorse and accepted responsibility for his actions, but that his pattern of misconduct displayed a lack of initiative and discipline expected in every Marine. The commander further stated that Petitioner's actions "are not indicative of the standards and behavior expected of a Marine," and that his retention "would be prejudicial to good order and discipline within this command and the Corps." See enclosure (11).

l. By memorandum dated 11 January 2013, the next higher commander in Petitioner's chain of command concurred with the battalion commander's recommendation that Petitioner be administratively separated from the Marine Corps under OTH conditions for a pattern of misconduct. See enclosure (12).

m. By memorandum dated 14 February 2013, the separation authority directed that Petitioner be administratively separated from the Marine Corps under OTH conditions for a pattern of misconduct. See enclosure (13).

⁵ Petitioner was charged with failing to report to the Battalion formation for a 12-mile hike on 19 September 2012

⁶ The forfeiture was suspended for seven days.

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n. On 19 February 2013, Petitioner was discharged from the Marine Corps under OTH conditions for a pattern of misconduct. See enclosure (2).

o. On 12 February 2015, the Naval Discharge Review Board (NDRB) unanimously determined that Petitioner's characterization of service and narrative reason for separation should remain unchanged. Petitioner asserted that his discharge was inequitable because he was treated unfairly by his command and did not deserve any of the NJPs he received, and that the characterization did not reflect the type of Marine that he was, but the NDRB rejected these contentions. See enclosure (14).

p. Petitioner, through counsel, contends that relief is warranted because all of his misconduct was relatively minor and non-violent, and occurred while he was a teenager. He claims to have rehabilitated his life and atoned for his misconduct.⁷ He also claimed to have been the subject of hazing by other Marines throughout his service,⁸ and that he still suffers from back problems due to an assault resulting in his fall from a truck during his Marine Corps service for which he did not receive appropriate medical treatment. As such, he asserts that equitable relief is warranted pursuant to reference (b). Petitioner's application is supported by several character references. See enclosure (1).

MAJORITY CONCLUSION:

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

The Board found no error in Petitioner's discharge under OTH conditions at the time that it was administered. While Petitioner has previously denied some of the misconduct for which he was discharged, he did not do so in his present application. Further, the presumption of regularity applies to establish that the misconduct documented in his naval record was supported by the evidence available at the time. Accordingly, there is sufficient evidence in the record to establish that Petitioner did, in fact, engage in a pattern of misconduct during his Marine Corps service. It also appears that Petitioner's administrative separation complied with all procedural requirements. He was provided notice of the proposed separation and waived his right to an administrative separation board. He did, however, avail himself of the opportunity to submit a statement in rebuttal, and it is apparent from the record that that statement was forwarded for consideration by the separation authority along with his command's recommendations. Finally, the misconduct in question was sufficient to justify a discharge under OTH conditions. Although each individual act of misconduct was relatively minor, for an administrative separation discharge due to a pattern of misconduct (as opposed to one for commission of a serious offense) it is the actual pattern itself, and not the individual acts comprising the pattern, which defines the severity of the misconduct. In this regard, Petitioner's misconduct was frequent and persistent, and he apparently did not respond favorably to the several NJPs administered with the intent to

⁷ Petitioner asserts that he now works with disabled children as a middle school teacher, attends church regularly, helps lead a faith-based exercise class, and is described by a former supervisor as "honorable, courageous, [and] committed." He also claims to have worked as an animal control officer, for a construction company, and as a recreational vehicle technician in the years since his discharge, and that he hope to own a gym one day.

⁸ Petitioner described many of the incidents that he had described in the statement he provided in response to his proposed administrative separation at enclosure (8).

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correct his conduct. Accordingly, Petitioner's OTH characterization of service was justified by the pattern of misconduct in his record.

In addition to evaluating the circumstances of Petitioner's discharge at the time that it was administered for error, the Board 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 Board considered, among other factors, the relatively minor and non-violent nature of Petitioner's misconduct; that Petitioner accepted responsibility and demonstrated remorse for his misconduct, as reflected in enclosure (9); Petitioner's claim to have been hazed by other Marines during his service; Petitioner's claim that he continues to suffer the effects of an injury received during his service; the evidence of Petitioner's rehabilitation, as reflected in his post-service employment record and positive conduct; that Petitioner is currently providing a valuable service to his community by working with disabled children as a middle school teacher; the Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Having determined that these mitigating factors outweigh the severity of the pattern of misconduct for which Petitioner was discharged under OTH conditions, 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).

Although the Majority found the mitigating circumstances described above to sufficiently outweigh the severity of his pattern of misconduct to justify the equitable relief described above, it did not find those mitigating circumstances to so significantly outweigh the severity of that misconduct to justify the extraordinary relief of an upgrade of his characterization of service to fully honorable as he requested. Petitioner's misconduct was simply too frequent and pervasive throughout his service to justify such extraordinary relief. Likewise, the Majority did not find sufficient basis to justify changing Petitioner's narrative reason for separation. Petitioner earned his discharge based upon his pervasive misconduct throughout his enlistment, and the Majority did not find the mitigating circumstances to be of sufficient weight to justify removal of this accurate description of the reason for this discharge.

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 interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service ending on 19 February 2013 was characterized as general (under honorable conditions). All other entries reflected on his current 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.

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MINORITY CONCLUSION:

Upon careful review and consideration of all 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 Petitioner's discharge from the Marine Corps under OTH conditions 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, but reached a different conclusion. Specifically, the Minority did not believe that the combined weight of the mitigating circumstances approached the severity of Petitioner's pattern of misconduct. The Minority believed that Petitioner's own statement issued in response to the notification of his proposed separation at enclosure (8) demonstrated that his performance and conduct as a Marine was even more deficient than his record otherwise reflects, as he described additional instances of disobedience and disrespect that were not captured elsewhere in his record and which were not relied upon for his administrative separation. What he described as harassment and/or hazing by superior noncommissioned officers was in most cases, in the Minority's opinion, the reasonable reactions of leaders frustrated with a substandard Marine who apparently refused to comport his conduct to that expected of Marines. While the Minority believed that Petitioner should be commended for apparently turning his life around after his discharge from the Marine Corps, it found that Petitioner's in-service pattern of misconduct was so pervasive and therefore so severe that the mitigating circumstances were not nearly sufficient to justify any 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.
5. The foregoing action of the Board is submitted for your review and action.

3/16/2024

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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.)
- MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct the relief recommended by the Minority above.)
- Petitioner’s Request Approved (Full Relief – I concur with the Majority conclusion that equitable relief is warranted in the interests of justice, but I do not believe that the relief recommended by the Majority goes far enough to serve that interest. Specifically, I found that the mitigating circumstances did so significantly outweigh the severity of Petitioner’s pattern of misconduct as to justify the relief requested. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 19 February 2013 was characterized as honorable and that the narrative reason for his separation was “Secretarial Authority” (with corresponding changes to the separation authority and code). I further direct that Petitioner be issued an Honorable Discharge Certificate.)

