



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

[REDACTED]  
Docket No. 1769-24  
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," 3 September 2014  
(c) PDUSD (P&R) Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)," 24 February 2016  
(d) 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  
(e) 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  
(f) MCO P1900.16F (Change 2), Marine Corps Separation and Retirement Manual (Short Title: MARCORSEPMAN), 6 June 2007

Encl: (1) DD Form 149 w/attachments  
(2) DD Form 2807-1, Report of Medical History, 19 November 2005  
(3) DD Form 214  
(4) [REDACTED], [REDACTED], [REDACTED] CO Memo 1500 ICO/tjc, subj: Recommendation for Administrative Separation in the case of [Petitioner], 7 January 2008  
(5) NAVMC 118(11), Administrative Remarks (1070), 31 January 2008  
(6) DD Form 2624, Specimen Custody Document – Drug Testing (Electronic Version), Form No: F01201861, 22 January 2008  
(7) DD Form 2807-1, Report of Medical History, 1 February 2008  
(8) [REDACTED], [REDACTED] Memo 1900 BAS, subj: Post-Traumatic Stress Disorder Screening in Conjunction with Involuntary Administrative Separation Processing ICO: [Petitioner], *undated*  
(9) [REDACTED], [REDACTED] CO Memo 1900 Leg, subj: Notification of Separation Proceedings, 7 February 2008

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- (10) Petitioner's Memo 1900 Leg, subj: Acknowledgment of my Rights to be Exercised or Waived during Separation Proceedings, 7 February 2008
- (11) Petitioner's Memo 1500 ICO/acp, subj: Separations [sic] Letter, 11 February 2008
- (12) DD Form 458, Charge Sheet, 12 February 2008
- (13) DD Form 2329, Record of Trial by Summary Court-Martial, 21 February 2008
- (14) Summary of Proceedings for the Summary Court-Martial of [Petitioner] on 21 February 2008
- (15) [REDACTED], [REDACTED] Memo 1900 CO, subj: Recommendation for Administrative Discharge in the case of [Petitioner], 27 February 2008
- (16) [REDACTED] Memo 1910 SJA, subj: Administrative Separation in the case of [Petitioner], 25 March 2008
- (17) [REDACTED] CG Memo 1910 SJA, First Endorsement on Enclosure (15), subj: Administrative Separation in the case of [Petitioner], 31 March 2008
- (18) Psychiatric Report, 1 March 2024
- (19) BCNR Memo Docket No: NR20240001769, subj: Advisory Opinion ICO [Petitioner], 23 July 2024
- (20) Petitioner's E-mail, subj: [Non-DoD Source] Re: Application for Military Record Correction – Request for Information (BCNR Docket #NR20240001769), sent Tuesday, August 20, 2024 @8:24:16PM

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 other corresponding changes to his DD Form 214.<sup>1</sup>

2. The Board considered Petitioner's allegations of error or injustice on 6 September 2024 and, pursuant to its governing policies and procedures, determined by a majority vote 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 references (b) – (e).

3. Having reviewed all 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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<sup>1</sup> Petitioner requested changes to blocks 23 (Type of Separation) and 26 (Separation Code). Specifically, he requested that his "Type of Separation" be changed from "Discharged" to "Release from Active Duty," and that his separation code be changed to "MBK," which equates to "Completion of Required Active Service." His request to change his type of separation is illogical, as he would have been discharged even if the reason for his separation was that he completed his required active service. Accordingly, the Board did not entertain that portion of Petitioner's request.

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c. On 19 November 2005, Petitioner underwent a pre-enlistment physical examination in anticipation of his enlistment in the Marine Corps. In his self-reported medical history, he disclosed prior marijuana use but denied any psychiatric or neurological conditions or symptoms. See enclosure (2).

d. Petitioner enlisted in the U.S. Marine Corps and began a period of active duty service on 29 November 2005. See enclosure (3).

e. Petitioner deployed with his unit to Iraq from April to November 2007. See enclosures (3) and (4).

f. On 7 January 2008, Petitioner submitted a urine sample which tested positive for the use of marijuana.<sup>2</sup> His command was notified of this result on 22 January 2008. See enclosure (6).

g. On 1 February 2008, Petitioner underwent a separation physical examination during which he was screened for and explicitly denied the existence of post-traumatic stress disorder (PTSD). His battalion surgeon found that Petitioner exhibited no signs or symptoms of PTSD. Petitioner was informed of these results and waived any PTSD treatment. See enclosures (7) and (8).

h. By memorandum dated 7 February 2008, Petitioner was formally notified that he was being processed for administrative separation for misconduct due to drug abuse. This notice informed Petitioner that he could be discharged under other than honorable (OTH) conditions. See enclosure (9).

i. On 12 February 2008, Petitioner acknowledged receipt of the notification referenced in paragraph 3h above and waived all of his rights with regard to the administrative separation process. See enclosure (10). Although Petitioner purported to waive his right to submit a statement for consideration by the separation authority in enclosure (10), he submitted such a statement by memorandum dated 11 February 2008.<sup>3</sup> See enclosure (11).

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<sup>2</sup> Other evidence in the records reflects that Petitioner admitted to the use of marijuana on 5 January 2008. See enclosure (5).

<sup>3</sup> Petitioner's statement to the separation authority was as follows:

1. I, [Petitioner], admit to using marijuana on the night of 05 Jan 2008. I did not use drugs to try and get out of the military, and I understood the legal consequences of my decision to use drugs.

2. I feel the Marine Corps has assisted me in becoming a better person. The Marine Corps has also changed me in other ways. It has affected my life outside the Marine Corps, which is much more important to me because I know my future does not lie in the Marine Corps.

3. I do not want to finish out my career on a bad note or anything other than an honorable discharge. I have never had any prior page 11 entries, or NJPs, and my proficiency and conduct marks have never fallen below average.

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j. On 12 February 2008, after the initiation of his administrative separation process, a single specification of wrongful marijuana use in violation of Article 112a, Uniform Code of Military Justice (UCMJ), was preferred against Petitioner. That specification was referred to a summary court-martial (SCM) on the same day. See enclosure (12).

k. On 21 February 2008, the SCM convicted Petitioner of the charged violation of Article 112a, UCMJ, pursuant to his plea. During the SCM hearing, Petitioner provided details regarding the circumstances of his offense. Specifically, he stated that he was at home on leave and did not feel that he was part of the Marine Corps at the time and knowing smoked marijuana. He also stated that he no longer wished to be in the Marine Corps. His adjudged sentence consisted of reduction to Private (E-1) and 30 days of restriction and extra duty. The convening authority approved the sentence as adjudged on 22 February 2008. See enclosure (13) and (14).

l. By memorandum dated 27 February 2008, Petitioner's commander recommended that Petitioner be discharged from the Marine Corps under OTH conditions. See enclosure (15).

m. By memorandum dated 25 March 2008, the separation authority's Staff Judge Advocate opined that Petitioner's administrative separation proceedings were sufficient in law and fact. See enclosure (16).

n. By memorandum dated 31 March 2008, the separation authority directed that Petitioner be separated from the Marine Corps under OTH conditions. In making this determination, he stated that he considered Petitioner's preservice drug waiver on the issue of separation, but not in determining the appropriate characterization of service. See enclosure (17).

o. On 28 April 2008, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to drug abuse. See enclosure (3).

p. On 1 March 2024, Petitioner presented for psychiatric treatment due to self-diagnosed PTSD. Specifically, he reported symptoms of paranoia, depression, anger, and anxiety. According to the mental health provider, he also reported incidents of "flashbacks and startle responses" resulting from his combat experience "in Afghanistan."<sup>4</sup> He was diagnosed with PTSD (chronic), a generalized anxiety disorder, and major depressive disorder, and was prescribed Trazadone. See enclosure (17).

q. Petitioner asserts that relief is warranted because he was suffering from undiagnosed symptoms of PTSD resulting from his combat experiences in Iraq, and that he used marijuana to cope with those symptoms. He claims to continue to experience these symptoms today. He further asserts that clemency is warranted based upon the President's recent pardon of Federal

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4. I have been to [REDACTED] once and I feel I have useful knowledge to hand down to the newer Marines joining our unit. I wish to finish out my commitment to the Marine Corps and my country.

<sup>4</sup> The Board presumes the reference to [REDACTED] to be a scrivener's error by the mental health provider.

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marijuana use convictions.<sup>5</sup> Petitioner's application is supported by three letters of support from family members. See enclosure (1).

r. Because he based his request for relief in whole or in part upon his claim of combat-related PTSD, his application and records were reviewed by a licensed clinical psychiatrist who provided an advisory opinion (AO) for the Board's consideration in accordance with reference (a). While acknowledging the diagnoses referenced in paragraph 3q above, the licensed clinical psychologist found that Petitioner's statement was not sufficiently detailed to provide a nexus between his reported mental health conditions and his misconduct. Based on the available evidence, the licensed clinical psychologist opined that there was insufficient evidence of a mental health condition that may be attributed to military service or that Petitioner's misconduct could be attributed to a mental health condition. See enclosure (19).

s. By e-mail dated 20 August 2024, Petitioner provided a response to the AO referenced in paragraph 3r above for the Board's consideration. He insisted that his PTSD symptoms were attributable to his experience in Iraq, and provided general details of those experiences. Specifically, he claimed to have encountered frequent mortar attacks, roadside bomb explosions, and gunfire exchanges on a routine basis, and that he was continuously exposed to danger. As such, anxiety and hyper-vigilance were necessary for survival, and did not disappear upon his return to the United States. He also claimed to have witnessed the death of a friend and numerous civilians, and that he had several close calls with death or serious injury that continue to haunt him today. See enclosure (20).

#### MAJORITY CONCLUSION:

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

The Majority found no error in Petitioner's discharge under OTH conditions for drug abuse when it was administered. Petitioner's actual drug use is not in controversy, as Petitioner admitted to it at the time and continues to do so in his present application. In accordance with reference (f), Petitioner's command was required to process Petitioner for administrative separation for the improper use of marijuana absent certain circumstances not at issue in this case.<sup>6</sup> There also does not appear to be any controversy regarding the process by which Petitioner was discharged, as he was properly notified of his proposed administrative separation pursuant to the administrative board process and exercised his rights in that regard. Finally, a discharge under OTH conditions was authorized for the conduct in question, as reference (f) provides that evidence obtained from an involuntary urinalysis pursuant to an inspection may be used to characterize a member's discharge in such a manner and the administrative board procedures were utilized. Because there was no error in Petitioner's involuntary discharge for drug abuse,

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<sup>5</sup> On 6 October 2022, President Biden issued a presidential proclamation that pardoned many federal offenses for simple marijuana possession offenses. On 22 December 2023, the President issued another proclamation that expanded the scope of the pardon announced on 6 October 2022 to include, amongst other offenses, simple marijuana use. These proclamations, however, did not cover military drug offenses under Article 112a, UCMJ.

<sup>6</sup> See paragraph 6210.5.



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the Majority found no basis to change Petitioner's separation code to reflect that he completed his required active service as he requests.

Because Petitioner based his request for relief upon his claimed combat-related PTSD condition, the Majority reviewed Petitioner's application in accordance with the guidance of references (a) – (e). Accordingly, the Majority reviewed Petitioner's application with liberal consideration that PTSD potentially contributed to the circumstances resulting in his OTH discharge in accordance with reference (a) and applied liberal consideration to Petitioner's claimed PTSD condition and its effect upon the misconduct for which he was discharged in accordance with references (b) – (e). Applying such liberal consideration, the Majority found sufficient evidence to conclude that Petitioner developed PTSD as a result of his combat experiences in [REDACTED]. This conclusion was supported by his recent PTSD diagnosis, as well as his own statements and those of his family members who knew him at the time in question. Even applying liberal consideration, however, the Majority found insufficient evidence of any nexus between Petitioner's PTSD condition and the misconduct for which he was discharged. In this regard, the Majority acknowledges that drug abuse can be a coping mechanism for undiagnosed PTSD symptoms and Petitioner's claim that this was the reason that he used marijuana. However, the preponderance of the evidence in the record reflects that this was not a contributing factor to Petitioner's drug abuse. Specifically, Petitioner admitted at the time that he smoked marijuana while he was drunk at a party.<sup>7</sup> This is not a legitimate circumstance under which a PTSD victim would use drugs to self-medicate for unrecognized PTSD symptoms. Additionally, Petitioner was explicitly screened for PTSD symptoms shortly after his drug use. In accordance with reference (b), liberal consideration is appropriate for PTSD because it can be difficult for Veterans to provide evidence of a condition which was not previously recognized. In Petitioner's case, however, PTSD was well known at the time of his service and he was specifically screened for it, and he denied the existence of any of the PTSD symptoms that he now claims to exist. This is not to suggest that the Board doubts Petitioner's claim that he suffers from these symptoms today, but rather only that the objective evidence in the record reflects that he was not suffering from these symptoms at the time of his drug use. These circumstances, combined with the fact that Petitioner had a history of pre-service marijuana use and that he apparently used marijuana when he went home on leave, convinced the Majority that Petitioner's marijuana was not to self-medicate for unrecognized PTSD symptoms, but rather more likely the result of him falling back into old habits when he was home on leave and away from the structure provided by the Marine Corps. Accordingly, even applying liberal consideration the Majority found insufficient evidence to conclude that Petitioner's illegal drug use was mitigated by his PTSD condition. Despite finding insufficient evidence of any nexus between Petitioner's misconduct and his then-undiagnosed PTSD condition, the Majority considered the existence of this condition amongst the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice as discussed below.

In addition to reviewing Petitioner's application with liberal consideration that Petitioner's combat-related PTSD condition potentially contributed to the circumstances resulting his OTH discharge in accordance with reference (a) and applying liberal consideration to Petitioner's

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<sup>7</sup> See enclosure (4).

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claimed PTSD condition and its effect upon the misconduct for which he was discharged in accordance with references (b) – (d), 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 (e). In this regard, the Majority considered, among other factors, the entirety of Petitioner’s service in the Marine Corps, which included service in combat, receipt of a Good Conduct Medal, and an overall average conduct rating of 3.8, and which appears to have been otherwise meritorious and honorable; that Petitioner likely developed PTSD as a result of his combat experience and presumably has continued suffering its effects since his discharge; the relatively minor and isolated nature of Petitioner’s misconduct, and the diminished perceived severity of his offense today relative to its perceived severity in 2008;<sup>8</sup> the likelihood that Petitioner would not receive the same adverse consequences under similar circumstances today; the character references provided for consideration; 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 found that partial 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 mitigate the stigma associated with his discharge.

Although the Majority found the mitigating circumstances to sufficiently outweigh the severity of Petitioner’s relatively minor misconduct to justify the equitable relief recommended below, it did not find those mitigating circumstances to so significantly outweigh the severity of that misconduct to justify the extraordinary relief of recharacterizing Petitioner’s discharge as fully honorable as he requests. In this regard, the Majority notes that Petitioner carries a significant burden to convince the Board that his otherwise valid OTH discharge for misconduct should be upgraded to honorable based on purely equitable considerations, and Petitioner provided no evidence or description of his post-service accomplishments or contributions to society upon which such relief might be based. While such evidence is not required, the inclusion of such matters may have warranted additional relief.<sup>9</sup> Additionally, the Majority noted that Petitioner’s overall average conduct rating throughout his career was only 3.8. At the time of Petitioner’s service, a minimum conduct rating of 4.0 was required to characterize a Marine’s overall service as honorable, regardless of the reason for the Marine’s discharge. Accordingly, the Majority found that the totality of the circumstances did not warrant the upgrade of Petitioner’s characterization of service to fully honorable as he requested.

#### MAJORITY RECOMMENDATION:

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<sup>8</sup> The Majority found no basis for “clemency” based upon the President’s blanket pardon of certain drug offenses. These pardons did not apply to violations of Article 112a, UCMJ, and even if they were to be extended to military drug offenses, Petitioner was not discharged due to a court-martial conviction. Rather, he was discharged due to the underlying drug offense for which he was convicted at SCM. Accordingly, such a pardon would have no effect upon the action in question. Although the Majority found no relevance in the President’s pardon of certain drug offenses in this regard, its existence is reflective of the diminished perceived severity of such offenses in society today relative to that perceived at the time of Petitioner’s offense. Accordingly, the Majority took the underlying basis for the pardon into consideration in determining whether equitable relief is warranted in the interests of justice.

<sup>9</sup> In accordance with reference (a), Petitioner is entitled to request reconsideration of this decision upon the presentation of material not previously considered by the Board.

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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 28 April 2008 was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN par. 6214"; and that his separation code was "JFF1." All other entries reflected 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.

That no further corrective action be taken on Petitioner's naval record.

#### 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 under OTH conditions when it was administered.

The Minority also reviewed Petitioner's application with liberal consideration that his combat-related PTSD condition potentially contributed to the circumstances resulting in his OTH discharge in accordance with reference (a), and applied liberal consideration to his claimed PTSD condition and its effect upon the misconduct for which he was discharged in accordance with references (b) – (d), and concurred with the Majority conclusions in this regard.

Finally, 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 (e). In this regard, the Minority considered the same potentially mitigating factors as did the Majority, but reached a different conclusion. Specifically, the Minority reached this conclusion for some of the same reasons as the Majority did not find Petitioner's requested upgrade of his characterization of service to honorable to be warranted. As there was no error in Petitioner's discharge under OTH conditions for misconduct due to drug abuse, Petitioner had a significant burden to prove that the interests of justice required changing the characterization of his service to something that it was not. The Minority found that Petitioner fell far short of that burden, and was not willing to gratuitously upgrade a properly assigned discharge characterization absent sufficient evidence that the interests of justice warranted such relief. In this regard, the Minority would encourage Petitioner to seek reconsideration and provide the Board with information regarding his post-service conduct and accomplishments upon which such relief could be based.

#### MINORITY RECOMMENDATION:



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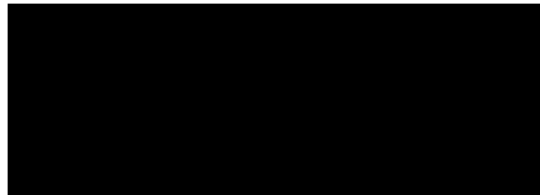
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In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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.

12/19/2024



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

  X   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 generally concur with the Majority conclusion that equitable relief is warranted in the interests of justice, but do not believe that the Majority's recommendation goes far enough to serve those interests. Specifically, applying liberal consideration I found sufficient evidence to conclude not only that Petitioner developed PTSD as a result of his combat experience in Iraq, but also that there was a logical nexus between this condition and his drug use. Accordingly, I assigned greater weight to the mitigating circumstances than did the Majority, and as a result found that the combined weight of those mitigating circumstances did so significantly outweigh the severity of Petitioner's relatively minor misconduct that his requested relief was warranted in the interests of justice. For this reason, I direct the relief recommended by the Majority above, except that his service is to be characterized as "Honorable" and his reentry code shall be changed to "RE-1." Petitioner shall also be issued an Honorable Discharge Certificate.)

