



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

██████████
Docket No. 2835-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████
██████████ USMCR

Ref: (a) 10 U.S.C. § 1552
(b) SECDEF Memo of 3 Sep 14 (Hagel Memo)
(c) PDUSD Memo of 24 Feb 16 (Carson Memo)
(d) USD Memo of 25 Aug 17 (Kurta Memo)
(e) USECDEF Memo of 25 Jul 18 (Wilkie Memo)

Encl: (1) DD Form 149 w/ enclosures

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 (Board) requesting that his punitive discharge be upgraded either to “Honorable,” his reentry code be changed to “RE-1,” and all derogatory remarks be removed from his final discharge. Enclosure (1) applies.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 26 August 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner’s application together with all material submitted in support thereof, relevant portions of Petitioner’s naval record, applicable statutes, regulations, and policies, to include references (b) through (e).

3. The Board, having reviewed all the facts of record pertaining to Petitioner’s allegations of error and injustice, 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. Although Petitioner’s application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner enlisted in the Marine Corps under a reserve option contract, began his initial period of required active service on 3 June 1997. He was honorably discharged into the Marine Corps Reserve, on 6 December 1997, in a mandatory drilling status.

c. Petitioner satisfactorily performed drill without incident until he failed his semi-annual physical fitness test (PFT), as documented in administrative counseling on 30 May 1998. He received five additional administrative counseling entries regarding his PFT failures from July 1998 through April 2000.

d. Petitioner's drill records indicate that, other than his failed PFT counseling entries, he drilled without incident until an unexcused drill absence on 12 January 2002. He continued to miss routine drills and was issued administrative counseling, on 4 August 2002, regarding his unsatisfactory participation and failure to notify his officer-in-charge of a proper excuse for his absence.

e. On 7 September 2002, Petitioner was administratively reduced to the paygrade of E-3 due to his unsatisfactory participation. He was administratively reduced again, on 12 January 2003, due to his continued unsatisfactory participation and, at that time, notified of administrative separation proceedings for the reason of unsatisfactory performance in the Ready Reserve and failure to attend regular scheduled inactive duty training. A recommendation for his discharge under Other Than Honorable conditions was also signed by his commanding officer listing a summary of missed drills each month from October 2002 through January 2003.

f. A gunnery sergeant at Petitioner's command swore an affidavit of service before a senior officer, on 15 January 2003, attesting to service of the notification upon Petitioner's last known address of record via certified mail. A delivery receipt for this notice and acknowledgment was signed for at the time of delivery on 22 January 2003.

g. The recommendation for Petitioner's administrative separation was not forwarded for action until 7 November 2003. This forwarding endorsement documented that the package had been submitted late due to attempts to contact Petitioner on several occasions, which were unsuccessful due to him not returning calls. Although Petitioner's separation under Other Than Honorable conditions for failure to participate was approved on 15 December 2003 with an "RE-4" reentry code, no administrative remark was entered into his official military personnel file to document his discharge characterization or reentry code prior to closing out his service record book.

h. Petitioner contends that his issues with attending drill arose primarily due to repeated experiences of sexual harassment from a staff sergeant and reprisal he was subject to after reporting it to his unit. His personal statement describes multiple, detailed incidents of inappropriate behavior he was subject to by the staff sergeant whom he claims was sexually harassing him as well as a description of the maltreatment he claims to have experienced after his initial attempt to report the harassment. Petitioner attributes his initial issues with missed drills to an injury and claims to have been verbally reprimanded in spite of having provided necessary documentation for the missed drill, which he further claims to have made up; however, he admits to the later missed drills. He further claims that his command failed to properly attempt to contact him regarding notification of his separation and submits evidence of post-discharge character for consideration of clemency. For purposes of clemency and equity consideration, he

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

[REDACTED] USMCR

submitted post-discharge letters of appreciation, performance appraisals, in-service awards, medical documentation of his in-service injury, and a personal statement.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief. The Board reviewed the application under the guidance provided in references (b) through (e).

In this regard, the Board noted Petitioner's extensive accrual of unsatisfactorily drills and does not condone his failure to fulfill his service contract. Additionally, the Board found Petitioner's contention regarding defective notice to be without merit and unsupported by the evidence of record. However, the Board observed that Petitioner provided a detailed and credible account of repeated incidents of serious and demeaning sexual harassment which the Board concluded substantially mitigated his unexcused drill absences. When evaluated in conjunction with his evidence of post-discharge character and accomplishments, which the Board likewise found satisfactory to warrant consideration of clemency, the Board concluded that the totality of favorable and mitigating factors was sufficient to outweigh his unsatisfactory performance in the Ready Reserve. Accordingly, the Board determined that it is in the interest of justice to upgrade Petitioner's characterization of service to Honorable and change his basis for separation to Secretarial Authority.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That an administrative remark, NAVMC 118(11), be entered into Petitioner's official military personnel file (OMPF) documenting that, on 15 December 2003, his "Honorable" discharge was issued under the authority of "MARCORSEPMAN par 6214," for the narrative reason of "Secretarial Authority," with a separation code of "JFF1," and "RE-1J" reentry code.

That Petitioner be issued an Honorable Discharge certificate.

That no further changes be made to Petitioner's record.

A copy of this report of proceedings be filed in 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-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED] USMCR

corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

9/17/2024

