



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

[REDACTED]
Docket No. 7790-24
Ref: Signature Date

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

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

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 P1900.16E, Marine Corps Separation and Retirement Manual (Short Title: MARCORSEPMAN), 27 June 1989
(e) MCO P1001R.1, Marine Corps Reserve Administrative Manual
(f) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 September 1997

Encl: (1) DD Form 149 (with attachments)
(2) DD Form 4, Enlistment/Reenlistment Document (Armed Forces of the United States), 6 December 1995
(3) DD Form 214
(4) NAVMC 118(11), Administrative Remarks (1070)
(5) Record of Efforts to Contact Petitioner after Missed IDT Drills
(6) [REDACTED] CO Memo 1900 Admin, subj: Notification of Discharge Proceedings, 16 October 1998
(7) DD Form 794MC, Other than Honorable Discharge Certificate, 21 April 1999
(8) BCNR Memo Docket No. 7790-24, subj: Advisory Opinion ICO [Petitioner], 22 November 2024

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.

2. The Board reviewed Petitioner's allegations of error or injustice on 3 February 2025 and, pursuant to its governing policies and procedures, determined by a majority vote that the corrective action indicated below should be taken on Petitioner's naval record in the interests of justice. Documentary material considered by the Board included the enclosures; relevant

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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 found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation 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.

c. On 6 December 1995, Petitioner enlisted in the U.S. Marine Corps Reserves (USMCR) for a period of eight years. See enclosure (2).

d. Petitioner served honorably on active duty for his initial recruit training from 11 December 1995 to 6 April 1996. See enclosure (3).

e. Petitioner was absent without authority from his inactive duty training (IDT) drills from 11 September 1998 to 13 September 1998. See enclosure (4).

f. Petitioner was absent without authority from his IDT drills from 30 September 1998 to 4 October 1998. See enclosure (4).

g. On 15 October 1998, Petitioner's command attempted to make contact with him regarding his unexcused absences from IDT. However, the telephone number on record was disconnected. See enclosure (5).

h. By memorandum dated 16 October 1998, Petitioner's command attempted to formally notify him via the administrative board procedures that he was being considered for administrative separation from the USNR for unsatisfactory participation in the Ready Reserve.¹ See enclosure (6).

i. On 21 April 1999, Petitioner was discharged from the USMCR under other than honorable (OTH) conditions. See enclosure (7).

j. Petitioner asserts that he served satisfactorily in the USMCR for several years before his unsatisfactory participation resulting in his discharge. He expressed his remorse for such conduct and claims to still be a proud Marine. Petitioner alluded to anxiety and depression symptoms that he was experiencing during the period in question but was unable to provide any clinical evidence of these conditions and explicitly stated that those issues were not related to his military service but rather the result of childhood trauma. Finally, Petitioner provided evidence of a long and successful post-service career in education, which included coaching and mentoring at-risk young men. See enclosure (1).

¹ It appears from the record that the command was unsuccessful in locating Petitioner.

k. Because Petitioner based his request for relief in part upon his claimed mental health conditions, his records and application were reviewed by a licensed clinical psychologist. By memorandum dated 22 November 2024, this licensed clinical psychologist provided an advisory opinion (AO) for the Board's consideration. Specifically, she opined that in the absence of any clinical records pertaining to Petitioner's claimed anxiety and depression symptoms, Petitioner's personal statement was not sufficiently detailed to establish any clinical symptoms in-service or to provide a nexus with his misconduct. Accordingly, it was the psychologist's clinical opinion that there was insufficient evidence of a mental health condition attributable to military service or to attribute the circumstances of Petitioner's separation to any such condition.² See enclosure (8).

MAJORITY CONCLUSION:

Upon careful review and consideration of all 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 or injustice in Petitioner's discharge under OTH conditions for unsatisfactory participation in the Ready Reserve at the time it was administered. In accordance with paragraph 6213 of reference (d), a Marine could be separated for unsatisfactory participation in the Ready Reserve under criteria established by reference (e), while reference (e) defined unsatisfactory participation in the Ready Reserve to include any unexcused absence from an IDT period. Accordingly, Petitioner's unexcused absences from multiple IDT periods provided an adequate basis for Petitioner's discharge for unsatisfactory participation in the USMCR.

Because Petitioner based his request for relief in part upon his claimed anxiety and depression, the Majority reviewed his application in accordance with the guidance of reference (b). However, Petitioner explicitly stated that these conditions were not related to his service in the Marine Corps. Specifically, he asserts that it was the product of childhood trauma at the hands of various family members prior to his entry into the Marine Corps. Reference (b) provides that liberal consideration is not required for cases involving pre-existing conditions which are determined not to have been aggravated by military service, and Petitioner provided no evidence or suggestion that his condition was aggravated by his military service. Accordingly, Petitioner's claim in this regard is not entitled to liberal consideration. Unfortunately, Petitioner failed to provide the Board with sufficient information about the manifestations of his claimed conditions to establish any nexus to the conduct for which he was discharged, even if liberal consideration applied to his case. As a result, the Majority found insufficient evidence to conclude that Petitioner's unsatisfactory participation in the USMCR was excused or mitigated by any mental health concerns.

In addition to reviewing the circumstances of Petitioner's discharge for error or injustice at the time it was administered, the Majority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (c). In this regard, the Majority considered, amongst other factors, that Petitioner

² A copy of this AO was forwarded to Petitioner for comment via e-mail dated 25 November 2024, but he failed to provide a response.

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apparently served satisfactorily in the USMCR for more than two years before he stopped attending IDT drill sessions; Petitioner's claim that he was suffering from mental health issues at the time of his unsatisfactory participation, including his claim that those issues were related to the pressure he felt to provide for his younger brother who was abandoned by drug addicted parents; Petitioner's sincerely expressed remorse for the conduct which resulted in his discharge from the USMCR and his self-reported pride in the Marine Corps and his previous service; Petitioner's post-service record of academic and professional accomplishment despite the stigma of his discharge and the mental health and family challenges that he described, to include earning multiple degrees and his long history as an educator, coach, and mentor to young men in his community; the character references provided with Petitioner's application for the Board's review; Petitioner's relative youth and immaturity at the time of his unsatisfactory participation in the USMCR; and the passage of time since Petitioner's discharge. Based upon these factors, the Majority determined that equitable relief is warranted in the interests of justice. Specifically, the Majority found these mitigating factors sufficient to justify the upgrade of Petitioner's characterization of service to general (under honorable conditions).

Although it found the mitigating factors sufficient to justify the equitable relief described above, the Majority did not find those mitigating factors to so significantly outweigh the severity of the conduct for which Petitioner was discharged to justify the upgrade of his characterization of service to fully honorable. In this regard, the Majority could not justify such extraordinary relief considering that Petitioner simply stopped participating in the USMCR, and determined that such relief would be unjust to the vast majority of Marines in the USMCR who routinely participate satisfactorily regardless of their individual external challenges. Accordingly, the Majority found that an upgrade to Petitioner's service to fully honorable was not warranted in the interest of justice given the totality of the circumstances.

MAJORITY RECOMMENDATION:

Based upon its conclusion 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 the DD Form 794MC documenting Petitioner's OTH discharge from the USMCR be removed from Petitioner's naval record.

That Petitioner's naval record be corrected as necessary to reflect that he was administratively separated from the USMCR under honorable conditions for unsatisfactory participation on 21 April 1999 with a general discharge.

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 the evidence of record, the Minority of the Board found insufficient evidence of any material error or injustice warranting relief.

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The Minority concurred with the Majority conclusion that there was no error or injustice in Petitioner's discharge from the Navy under OTH conditions for unsatisfactory participation in the USMCR when it was administered.

The Minority also concurred with the Majority's conclusion regarding the applicability of reference (b) to Petitioner's case, and that there is insufficient evidence to conclude that the conduct for which Petitioner was discharged was excused or mitigated by any mental health concerns.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether equitable relief is warranted in the interest of justice in accordance with reference (c). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority but reached a different conclusion. Specifically, the Minority simply found the mitigating factors insufficient to justify any equitable relief. Petitioner's service in the USMCR was properly characterized as OTH when he stopped participating. As such, he bears a heavy burden to demonstrate that the properly assigned characterization of his service should be equitably changed to something that it was not; the Minority did not believe that he satisfied that burden.

MINORITY RECOMMENDATION:

Based upon its conclusion 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 in accordance with paragraph 6e(1)(b) of Enclosure (1) to reference (f).

[REDACTED]
Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

- X MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the corrective action 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.)
- _____ MAJORITY Recommendation Approved (with modifications) (Grant Relief – I concur with the Majority conclusion that equitable relief is warranted given the totality of the circumstances, 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 extraordinary relief of an upgrade of Petitioner’s characterization of service to fully honorable. Accordingly, I direct that Petitioner’s naval record be corrected as necessary to reflect that he was honorably discharged from the USMCR on 21 April 1999 based upon the Secretary’s Plenary Authority.)

[REDACTED]

Assistant General Counsel (M&RA)