



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

█
Docket No. 10052-24
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) 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, "Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018
(e) MCO P1900.16D, Marine Corps Separation and Retirement Manual (Short Title: MARCORSEPMAN), 27 June 1989
(f) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) DD Form 1966, Record of Military Processing – Armed Forces of the United States
(4) NAVMC 118(9), Combat History – Expeditions – Awards Record (1070)
(5) NAVMC 118(11), Administrative Remarks (1070), 3 October 1991
(6) NAVMC 118(11), Administrative Remarks (1070) (12 March 1992 – 15 July 1992)
(7) Weapons Company, █ CO Memo, subj: Administrative Separation; Case of [Petitioner], 30 July 1992
(8) NAVMC 118(11), Administrative Remarks (1070), 24 July 1992
(9) █ Medical Center Surgical Report, Document No. 128524, 17 August 1992
(10) █ CO Memo 1910 LSST-D/6, subj: Notification of Separation Proceedings, 15 September 1992
(11) Medical Officer Memo, subj: Medical Evaluation for Drug and Alcohol Abuse, 30 September 1992
(12) NAVMC 118(11), Administrative Remarks (1070) (2 October 1992 – 28 December 1992)
(13) █ CO Memo 1910 LSST-D/6, subj:

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- Recommendation for Administrative Discharge; in case of [Petitioner],
13 October 1992
- (14) Petitioner's Memo 1910 LSST-D/6, subj: Acknowledgment of my Rights to be
Exercised or Waived during Separation Proceedings, 21 October 1992
- (15) [REDACTED] CO Memo 1910 S-1, First Endorsement on Enclosure (13),
subj: Recommendation for Administrative Discharge; in case of [Petitioner],
29 October 1992
- (16) [REDACTED] SJA Memo 1910 17, subj: Separation Proceedings in the case of
[Petitioner], 24 November 1992
- (17) [REDACTED] CO Memo 1910 17, Second Endorsement on Enclosure (13),
subj: Recommendation for Administrative Discharge; in case of [Petitioner],
24 November 1992
- (18) University of [REDACTED] Psychological Assessment,
17 September 2002
- (19) [REDACTED] Department of Veterans Affairs Medical Center Letter,
4 June 2004
- (20) Naval Discharge Review Board (NDRB) Discharge Review Decisional Document,
Docket No. [REDACTED]
- (21) BCNR Letter RJO Docket No. [REDACTED], 3 September 2019
- (22) BCNR Memo Docket No. 1 [REDACTED], subj: Advisory Opinion ICO [Petitioner],
12 February 2025

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.¹

2. The Board considered Petitioner's allegations of error or injustice on 9 April 2025 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) – (d).

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 (DON).

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. Petitioner enlisted in the Marine Corps and began a period of active-duty service on

¹ Petitioner's present application constitutes a request for reconsideration of the Board's previous denial of his request for relief in Docket No. [REDACTED].

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23 April 1990.² See enclosure (2).

d. Petitioner participated in OPERATIONS DESERT SHIELD and DESERT STORM from 1 December 1990 to 10 May 1991. He then participated in [REDACTED] in [REDACTED] from 11 May 1991 to 29 May 1991.³ See enclosure (4).

e. On 3 October 1991, Petitioner was formally counseled in writing for “[c]onduct unbecoming of a Marine of his rank, display[ing] a lack of common sense and put[ting] his life and the life [sic] of other Marines and civilians at risk.”⁴ He was directed to meet with the Substance Abuse Control Officer and advised that failure to take corrective action could result in administrative separation. Petitioner elected not to provide a statement in response to this counseling. See enclosure (5).

f. On 12 March 1992, Petitioner acknowledged that he was eligible but not recommended for promotion to Corporal for the April 1992 promotion period “because of a lack of maturity and discipline.” He elected not to provide a statement in response to this notice. See enclosure (6).

g. On 8 April 1992, Petitioner acknowledged that he was eligible but not recommended for promotion to Corporal for the May 1992 promotion period “because of a lack of maturity and responsibility.” He elected not to provide a statement in response to this notice. See enclosure (6).

h. On 5 June 1992, Petitioner was apprehended by civilian authorities for driving under the influence of alcohol. See enclosure (7).

i. On 10 June 1992, Petitioner was formally counseled in writing for his “[c]ontinued lack of responsibility and maturity.”⁵ He was directed to reduce his alcohol consumption and to increase his personal dependability and responsibility. Petitioner elected not to provide a statement in response to this counseling. On the same day, he acknowledged that he was eligible but not recommended for promotion to Corporal for the July 1992 promotion period “because of a lack of dependability and responsibility.” He elected not to provide a statement in response to this notice as well. See enclosure (6).

j. On 11 July 1992, Petitioner was again apprehended by civilian authorities for driving under the influence of alcohol after destroying his personally owned vehicle. See enclosures (6) and (7).

² Petitioner enlisted in the Marine Corps pursuant to a moral waiver. His pre-service record included two citations for underage drinking and an arrest for shoplifting. He also admitted to the preservice use of illicit drugs. See enclosure (3).

³ [REDACTED] was a humanitarian relief effort in response to a devastating cyclone that struck [REDACTED]

⁴ This counseling statement explained that Petitioner had “continually [sic] been reminded of the dangers of driving while under the influence of alcohol but blatantly disobeyed all orders and warnings.”

⁵ This counseling statement explained that Petitioner “operated a vehicle under the influence of alcohol and was apprehended by civilian authorities.” The Board presumes that this was in reference to his apprehension referenced in paragraph 3h above.

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k. On 15 July 1992, Petitioner acknowledged that he was eligible but not recommended for promotion to Corporal for the August 1992 promotion period “because of a lack of responsibility, initiative, and good conduct.” He elected not to provide a statement in response to this notice. See enclosure (5).

l. On 24 July 1992, Petitioner was formally counseled in writing for “[c]ontinually demonstrat[ing] a lack of responsibility, disrespect towards authority, and the safty [sic] of civilians and fellow Marines by his frequent incidents of driving under the influence of alcohol.” He was advised that subsequent violations of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian convictions could result in his administrative separation under other than honorable (OTH) conditions. Petitioner elected not to provide a statement in response to this counseling. See enclosure (8).

m. By memorandum dated 30 July 1992, Petitioner’s company commander “highly recommended” that Petitioner be separated from the Marine Corps “as expeditiously as possible due to his inexplicable pattern of misconduct.” In making this recommendation, he stated that “[i]t is quite clear that this Marine has no regard for civil or military authority” and described Petitioner as “a danger to himself and to others around him.” See enclosure (7).

n. On 17 August 1992, Petitioner was ejected from the passenger seat of a 5-ton military truck when it rolled over during a training exercise and struck his head on the pavement, sustaining a complex compound laceration to his left parietal occipital area exposing the paracranium. He underwent a surgical procedure on the same day at the [REDACTED] Medical Center. See enclosure (9).

o. By memorandum dated 15 September 1992, Petitioner was formally notified via the administrative board procedures referenced in paragraph 6304 of reference (e) of his battalion commander’s intent to recommend that he be involuntarily discharged from the Marine Corps by reason of misconduct due to a pattern of misconduct. Specifically, the stated basis for this recommendation was the contents of enclosures (5), (6), and (8) evidencing discreditable involvement with civil authorities. See enclosure (10).

p. On 30 September 1992, Petitioner underwent a medical evaluation and was diagnosed as being psychologically dependent on alcohol. He was recommended for Level III alcohol rehabilitation treatment. See enclosure (11).

q. On 2 October 1992, Petitioner elected to forego any alcohol rehabilitation treatment. See enclosure (12).

r. Petitioner was restricted from driving either a personally- or government-owned vehicle until he was discharged from the Marine Corps on 2 October 1992. See enclosure (12).

s. By memorandum dated 13 October 1992, Petitioner’s battalion commander recommended that Petitioner be discharged from the Marine Corps under OTH conditions for misconduct due to a pattern of misconduct as evidenced by his frequent involvement with civilian authorities. See enclosure (13).

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t. By memorandum dated 21 October 1992, Petitioner acknowledged the notice referenced in paragraph 3o above and voluntarily waived all of his rights with regard to the administrative discharge process. See enclosure (14).

u. By memorandum dated 29 October 1992, Petitioner's regimental commander endorsed his battalion commander's recommendation referenced in paragraph 3s above, also recommending that Petitioner be discharged under OTH conditions. See enclosure (15).

v. By memorandum dated 24 November 1992, the separation authority's Staff Judge Advocate (SJA) found Petitioner's proposed administrative separation under OTH conditions to be sufficient in law and fact. Like the chain of command, the SJA also recommended that Petitioner be discharged from the Marine Corps under OTH conditions. See enclosure (16).

w. By memorandum dated 24 November 1992, the separation authority approved the recommendations of Petitioner's chain of command (and his own SJA), directing that Petitioner be discharged from the Marine Corps under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (17).

x. On 18 January 1993, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to a pattern of misconduct. See enclosure (2).

y. In 2001, Petitioner was incarcerated in [REDACTED] for the possession of marijuana.⁶ Specifically, he was apprehended for transporting 99 pounds of marijuana. However, he denied that he was using the substance at the time. See enclosure (18).

z. By letter dated 4 June 2004, the Department of Veterans Affairs (VA) informed Petitioner that he was not eligible for care in the VA system due to his OTH discharge. See enclosure (19). Other evidence in the record, however, reflects that he was subsequently granted service connection from the VA "for treatment purposes only" for traumatic brain injury (TBI) and migraine headaches, but denied any service connection for post-traumatic stress disorder (PTSD). See enclosure (18).

aa. In March 2007, Petitioner requested that the Naval Discharge Review Board (NDRB) upgrade his discharge characterization to general (under honorable conditions). Specifically, he asserted that corrective action was warranted because his alcohol abuse was the product of his efforts to cope with the trauma he experienced in [REDACTED] and [REDACTED] and the head injury referenced in paragraph 3n above.⁷ See enclosure (20).

bb. On 14 December 2007, the NDRB unanimously found Petitioner's discharge under OTH conditions to be equitable and proper, noting that Petitioner's history of substance abuse predated his service in the Navy. See enclosure (20).

⁶ Other evidence in the record reflects that this was a two-year sentence.

⁷ Petitioner also requested a discharge upgrade in order to establish his eligibility for VA benefits, but the NDRB found that to be an improper basis for relief.

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cc. On 22 August 2019, the Board found insufficient evidence of any error or injustice in Petitioner's naval record warranting relief in Docket No. [REDACTED]. Specifically, the Board found insufficient evidence that Petitioner was unfit to perform the duties of his office, grade, rank, or rating; that there was no nexus between Petitioner's TBI diagnosis and his misconduct since the TBI occurred after his multiple incidents of driving under the influence of alcohol; and that the severity of Petitioner's misconduct outweighed any mitigation from his PTSD diagnosis. See enclosure (21).

dd. On 17 September 2022, a mental health clinic associated with the University of [REDACTED] ("[REDACTED]") published a psychological assessment diagnosing Petitioner with PTSD (with dissociative symptoms) and a depressive disorder.⁸ The conclusion of this assessment was stated as follows:

[Petitioner's] traumatic military experiences in military service appear to be the source of his current PTSD symptoms including intrusive and distressing dreams of the event, flashbacks, a persistent avoidance of people, places and things that remind him of the event, negative alterations in mood including detachment from others and persistent and exaggerated beliefs about the world, and marked alterations in arousal and reactivity including hypervigilance, an exaggerated startle response, and difficulty with concentration. These symptoms served as the reason why [Petitioner] began drinking, which resulted in his DUI's and these symptoms have persisted since his military service. Therefore, it is the opinion of these evaluators that [Petitioner's] substance use which served as the catalyst for his discharge is more likely than not due to the trauma he sustained while in service. It is also noteworthy that he was not offered treatment for his substance use until after the severe TBI.

See enclosure (18).

ee. Petitioner, through counsel, asserts that equitable relief is warranted because his combat-related PTSD condition and subsequent TBI mitigated the misconduct for which he was discharged.⁹ Petitioner's counsel further asserted that Petitioner's OTH discharge characterization was inequitable in light of Petitioner's otherwise outstanding service record and because he was not rehabilitated to the maximum extent possible, and that the Board's decision in Docket No. [REDACTED] was improper because it failed to comply with references (b) – (d).¹⁰ Included with Petitioner's application were several third-party statements previously utilized to support his claim for VA benefits. See enclosure (1).

⁸ Petitioner was referred to this clinic by his attorney "in pursuant of a discharge status upgrade due to trauma experienced while he was in military service." The assessment further specified that Petitioner wanted to obtain service connection for PTSD related to his military experience from the VA. This report was the product of five separate assessments conducted throughout 2022, and was prepared by two Medical Assistants acting under the supervision of a licensed clinical psychologist.

⁹ Petitioner's counsel cites to the wrong statutory authority for relief throughout his brief in support of Petitioner's application. Specifically, he cites to 10 U.S.C. § 1553 throughout, which applies within the DON only to reviews conducted by NDRB. This Board, by contrast, is governed by reference (a).

¹⁰ The latter argument was without merit, as the Board's decision in Docket No. [REDACTED] reflected clear compliance with the guidance of references (b) – (d). Paragraph 18 of the Attachment to reference (c) states that "the severity of misconduct may outweigh any mitigation from mental health conditions, including PTSD [and] TBI." This was the explicit basis for the Board's decision to deny relief in Docket No. [REDACTED]

ff. Because Petitioner based his request for relief upon his claimed combat-related PTSD condition, his application and records were reviewed by a licensed clinical psychologist who provided an advisory opinion (AO) for the Board's consideration. The licensed clinical psychologist noted inconsistencies between the alcohol use reported by Petitioner in the context of his psychological assessment at enclosure (18) and that reflected in his service records, which she found to raise doubts regarding the reliability of Petitioner's recall of events. It was the licensed clinical psychologist's opinion that there was insufficient evidence to attribute Petitioner's misconduct to PTSD or TBI.¹¹ See enclosure (22).

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.

As a preliminary matter, Petitioner's counsel was mistaken in his assertion that that a physician, clinical psychologist, or psychiatrist must be included as a member of the Board in accordance with 10 U.S.C. § 1553(d)(1). As stated in footnote 9 above, 10 U.S.C. § 1553 is not applicable to the proceedings of this Board. This Board's obligation in the case of a claim based upon combat-related PTSD is to "seek advice and counsel in the review from a psychiatrist, psychologist, or social worker with training on mental health issues associated with [PTSD],"¹² which is reflected at enclosure (22). Petitioner's counsel was also mistaken in his assertion that references (b) – (d) create a presumption in favor of a discharge upgrade in this case. To the contrary, reference (c) explicitly states that "[l]iberal consideration does not mandate an upgrade" and that "the severity of misconduct may outweigh any mitigation from mental health conditions, including PTSD."¹³

The Majority found no error or injustice in Petitioner's discharge under OTH conditions for a pattern of misconduct at the time it was administered. The existence of Petitioner's pattern of misconduct is not in controversy, as it was well documented in Petitioner's naval record and Petitioner does not dispute his multiple arrests by civilian authorities for operating a vehicle while under the influence of alcohol. In accordance with paragraph 6210.3 of reference (e), "[a] Marine may be separated where there is a pattern of [infractions more serious than minor disciplinary infractions] which include two or more discreditable involvements with civil and/or military authorities or two or more instances of conduct prejudicial to good order and discipline within one enlistment." Petitioner's record reflects two discreditable involvements with civil authorities pertaining to driving while under the influence of alcohol and additional instances not involving civilian authorities, all of which were prejudicial to good order and discipline. Accordingly, there was a proper factual basis for his discharge upon this basis. The record also reflects that all procedural requirements were satisfied to sustain Petitioner's discharge upon this

¹¹ A copy of this AO was sent to Petitioner's attorney for comment under cover of letter dated 14 February 2025. However, no response was subsequently received.

¹² See subsection (g)(2) of reference (a).

¹³ See paragraphs 26k and 18 of the attachment to reference (c), respectively.

basis.¹⁴ Specifically, the administrative board procedures of paragraph 6304 of reference (e) were utilized, putting Petitioner on notice that he could be discharged under OTH conditions. Petitioner voluntarily waived all of his rights in the administrative separation process and his discharge under OTH conditions was approved by proper authority. Finally, an OTH characterization of service was appropriate under the circumstances. In accordance with paragraph 1004.3c of reference (e), an OTH characterization may be issued when “the reason for separation is based upon behavior or omission that constitutes a significant departure from the conduct expected of a Marine.” Petitioner’s multiple instances of endangering others by driving under the influence of alcohol despite multiple warnings satisfied this criteria and warranted such a characterization.

Because he based his request for relief upon his claimed PTSD and TBI conditions, the Majority reviewed Petitioner’s application in accordance with the guidance of references (a) – (c). Accordingly, the Majority applied liberal consideration to Petitioner’s claim to have suffered from a PTSD condition and a TBI during his service in the Marine Corps, as well as to the potential impact that this condition and/or injury may have had upon the conduct resulting in his discharge in accordance with reference (b) and (c). The Majority also reviewed Petitioner’s application with liberal consideration that PTSD potentially contributed to the circumstances resulting in his discharge with an OTH characterization of service in accordance with reference (a).¹⁵

The Majority need not have applied liberal consideration to conclude that Petitioner suffered a TBI during his naval service. The incident of 17 August 1992 and the head injury that Petitioner suffered as a result are well documented in his record. Even if it wasn’t so documented, the VA decision to grant Petitioner service connection for TBI (and his migraines) for treatment purposes despite his OTH characterization of service provided persuasive evidence that he incurred a TBI during his service in accordance with reference (c). Even applying liberal consideration, however, the Majority found that Petitioner’s TBI could not have excused or mitigated the misconduct for which he was discharged. Every individual act of misconduct constituting the pattern for which Petitioner was discharged occurred prior to 17 August 1992, and his company commander had already recommended that Petitioner be discharged on that basis more than two weeks earlier. Accordingly, Petitioner’s TBI had no nexus to or impact upon the behavior which resulted in Petitioner’s discharge. If anything, it contributed to the apparent end of this pattern since Petitioner was not able to get behind the wheel of a vehicle for some time thereafter. While finding that Petitioner’s TBI did not excuse or mitigate any of the misconduct for which he was discharged, the Majority considered this unfortunate experience and its potential long-term consequences amongst the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice, as discussed further below.

¹⁴ The Board acknowledges that Petitioner acknowledged enclosure (13) and elected to waive his rights after the battalion commander moved forward to recommend his discharge under OTH conditions, but found no error or injustice in this deviation from the normal process. It appears that the battalion commander waited an appropriate and reasonable period of time for Petitioner to make his elections before moving forward with the process, and Petitioner ultimately did make his elections before his separation proceedings advanced further.

¹⁵ Petitioner’s TBI did not fall within the statutory liberal consideration parameters of reference (a) because it was not claimed to be combat-related.

Through the application of liberal consideration, the Majority found sufficient evidence to conclude that Petitioner may have developed PTSD during his Marine Corps service despite the absence of any in-service diagnoses for this condition. Specifically, the Majority applied liberal consideration to the PTSD diagnosis and attribution discussed in the psychological assessment at enclosure (18) (see paragraph 3dd above), which was apparently performed under the supervision of and endorsed by a licensed clinical psychologist, to conclude that Petitioner developed PTSD as a result of his experiences in [REDACTED] and [REDACTED] despite the absence of any other objective evidence establishing such a diagnosis. Having found such evidence through the application of liberal consideration, the Majority also determined through similar application of liberal consideration that Petitioner's PTSD condition potentially contributed to the circumstances resulting in Petitioner's discharge under OTH conditions, and that the misconduct in question may therefore have been mitigated by the PTSD condition. Specifically, the Majority found it plausible that Petitioner turned to alcohol to self-medicate for his untreated PTSD symptoms, and that this alcohol use contributed to his multiple instances of driving under the influence of alcohol. Even applying liberal consideration, the Majority did not find Petitioner's PTSD condition to excuse any of this misconduct – while Petitioner's alcohol use could reasonably be attributed to PTSD, the act of driving while intoxicated and therefore endangering others cannot. However, Petitioner's self-medication of his untreated PTSD symptoms would provide context for Petitioner's repeated overindulgence in alcohol, which would mitigate the misconduct resulting from that overindulgence.

In addition to applying liberal consideration to Petitioner's claimed PTSD condition and TBI and the potential impacts of this condition and injury upon the conduct for which Petitioner was discharged in accordance with references (a) – (c), 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 (d). In this regard, the Board considered, amongst other factors, the mitigating effect of Petitioner's potential PTSD condition upon the misconduct for which he was discharged, as discussed above; the entirety of Petitioner's service in the Marine Corps, which included service in combat and in a humanitarian contingency operation; that Petitioner may have developed PTSD as a result of his experiences in [REDACTED] and [REDACTED], and presumably has continued to suffer its effects ever since; that Petitioner suffered a TBI during a training event and has apparently has continued to suffer its effects ever since; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. While finding Petitioner's pattern of misconduct to be serious, the Majority found the combined weight of these mitigating factors sufficient to justify purely equitable relief in the interests of justice. Specifically, the Majority found these mitigating factors to sufficiently outweigh the severity of Petitioner's pattern of misconduct to justify an equitable upgrade to his characterization of service to general (under honorable conditions).

While finding the mitigating circumstances to sufficiently outweigh the severity of Petitioner's pattern of misconduct to justify the equitable relief described above, the Majority did not find those mitigating circumstances to so significantly outweigh the severity of his misconduct to justify the extraordinary relief that he requests. In this regard, the Majority notes that the severity of a pattern of misconduct is judged not by the individual acts which make up the pattern but upon the pattern itself, and that Petitioner's pattern of misconduct was quite severe. Despite numerous warnings and generous opportunities to improve his conduct and avoid the

consequences he ultimately suffered, Petitioner operated a vehicle while under the influence of alcohol at least three times. While he was only arrested by civilian authorities for driving under the influence of alcohol on two occasions, his record reflects that he was counseled for such misconduct long before his first civilian arrest. On each occasion that Petitioner elected to operate a motor vehicle while under the influence of alcohol, he put the lives of his fellow Marines and random civilians at great risk. In this regard, the Majority was not influenced by Petitioner's assertion that his misconduct never actually harmed anyone; Petitioner's extraordinarily good luck in this regard does not negate the severity of his misconduct. The Majority also noted that Petitioner's second civilian arrest occurred while he was pending charges for the first, which it found to further aggravate his misconduct. The Majority was also not persuaded by the claim of Petitioner's attorney that Petitioner was not offered timely rehabilitation treatment. The record reflects that Petitioner was instructed to meet with the SACO during his first counseling in October 1991 – it was his responsibility to follow up with the rehabilitation resources available to him. Finally, the Majority found that Petitioner's attorney exaggerated the overall quality of Petitioner's service. Petitioner was only two months out of his initial entry training when he deployed with his unit to an environment where it would be difficult for him to engage in alcohol-related misconduct, and such misconduct began to accumulate soon after his return from that deployment. He simply did not have enough time in service to build a record of the quality described by his attorney. Additionally, none of the "numerous awards" he received, which his attorney relied upon in describing his service as "spectacular," were merit-based; they were all based merely upon his participation in various operations rather than upon the quality or merit of his service. This is not to criticize the overall quality of Petitioner's service; he certainly deserves and received credit for serving in combat, but his service record simply was not as meritorious as his attorney described such as to justify the extraordinary relief he requests. Finally, the Majority noted that Petitioner failed to provide the Board with any evidence or description of his post-service activities and/or accomplishments which might provide an alternative or additional basis for equitable relief. While he was not penalized for failing to provide such material, the absence of such information limited the bases upon which the Board might otherwise grant the extraordinary relief he requested. Accordingly, the Majority did not find that an equitable upgrade of Petitioner's characterization of service to fully honorable was warranted under the totality of the circumstances. For the same reason, the Majority also determined that no equitable change to Petitioner's narrative reason for separation was warranted.

MAJORITY RECOMMENDATION:

Based upon its conclusions discussed 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 18 January 1993 was characterized as "General (under honorable conditions)." All other entries reflected on Petitioner's 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.

MINORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice warranting relief.

The Minority concurred with the with the Majority conclusion above in all regards except with regard to the conclusion that equitable relief is warranted in the interests of justice.¹⁶ Accordingly, the Minority adopted and incorporated by reference the Majority's conclusions discussed above up until the Majority's discussion of its consideration of the totality of the circumstances in accordance with reference (d).

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 (d). In this regard, the Minority considered the same potentially mitigating circumstances as did the Majority, but reached a different conclusion. Specifically, the Minority applied significantly more weight to the severity of Petitioner's pattern of misconduct than did the Majority, and as a result simply did not find the combined weight of the mitigating circumstances to even approach that of Petitioner's misconduct to justify any equitable relief. The Minority found the factors cited by the Majority to explain its rationale for denying an upgrade of Petitioner's characterization of service to fully honorable sufficient to disqualify Petitioner from any equitable upgrade. The Minority also noted evidence in the record that Petitioner was convicted and incarcerated for two years for transporting 99 pounds of marijuana in 2001. While he insisted during his psychological assessment that he was not using that marijuana, that actually increased the severity of this post-service misconduct in the Minority's opinion since it suggests that Petitioner possessed this large amount of marijuana for distribution purposes. Such misconduct cannot be reasonably attributed to his PTSD condition or TBI. Reference (d) specifically provides that the Board should considered post-service conduct, "including any arrests, criminal charges, or any convictions" in determining whether to grant relief on the basis of an injustice. As such, the Minority found that Petitioner's post-service conviction for possession of marijuana in such quantities and under such circumstances as to make his intent to distribute apparent would be disqualifying for equitable relief he seeks, even if such relief was justified in the first place.

MINORITY RECOMMENDATION:

Based upon its conclusions discussed 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.

¹⁶ Even applying liberal consideration in accordance with references (b) and (c), the Minority harbored doubts regarding the validity of Petitioner's PTSD diagnosis since the VA denied him service connection for PTSD and the diagnosis and assessment reflected in enclosure (18) were premised upon the factual inaccuracy that Petitioner only began drinking alcohol after his allegedly traumatic experiences in [REDACTED] and [REDACTED]. The record actually reflects that he was twice cited for underage drinking before enlisting in the Marine Corps. However, the Minority considered this doubt to ultimately be immaterial given the basis for its conclusion below.

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5. The foregoing action of the Board is submitted for your review and action in accordance with Section 6e(1)(b) of Enclosure (1) to reference (f).

8/7/2025



ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ MAJORITY Decision Approved (Partial Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by the Majority above.)

X MINORITY Decision Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner’s naval record.)

___ Petitioner’s Request Approved (Full Relief – I generally 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 in this case. Specifically, I found the mitigating circumstances to so significantly outweigh the severity of Petitioner’s pattern of misconduct to justify the equitable relief that he seeks. Accordingly, I direct that Petitioner be issued a new DD Form 214 reflecting that his service ending on 18 January 1993 was characterized as “Honorable”; that the narrative reason for his separation was “Determination of Service Secretary – Secretary of the Navy Plenary Authority”; that his separation authority was “MARCORSEPMAN par. 6214”; that his separation code was “JFF1”; and that his reentry code was “RE-1J.” Petitioner shall also be issued an Honorable Discharge Certificate.

