



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

[REDACTED]
Docket No. 11709-24
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] 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
(c) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1993

Encl: (1) DD Form 149 w/attachments
(2) DD Form 214
(3) NAVMC 118(12), Offenses and Punishments, 3 August 1993
(4) NAVMC 118(12), Offenses and Punishments, 21 January 1994
(5) DON Physical Disability Board Memo 1850 10C:111 PEB Index No. [REDACTED], subj: Notification of Decision, 6 October 1993
(6) Marine Reserve Force General Court-Martial Convening Authority Action and Order Number [REDACTED], [REDACTED]
(7) Unpublished Opinion, in the case of United States v. [Petitioner], in the U.S. Navy-Marine Corps Court of Criminal Appeals, [REDACTED], decided 10 October 1995
(8) Navy-Marine Corps Appellate Review Activity Memo 5814 Ser 40.32, subj: Notification of Completed Appellate Review on [Petitioner], Tried at Naval Training Center, [REDACTED] on 25 May 94 by General Court-Martial Convened by Commanding General, Marine Reserve Force, FMF, USMCR, [REDACTED]
(9) Navy and Marine Corps Appellate Leave Activity General Court-Martial Supplemental Order No. [REDACTED]

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 the characterization of his discharge be upgraded.¹
2. The Board reviewed Petitioner's allegations of error or injustice on 21 February 2025 and, pursuant to its governing policies and procedures, determined by a majority vote that the

¹ Petitioner requested that his bad-conduct discharge (BCD) be upgraded to "Honorable or Honorable Conditions [(i.e., General (under honorable conditions)]."

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clemency indicated below should be granted in the interests of justice. The Board also identified an administrative error on Petitioner's DD Form 214. 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 the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board finds as follows:

- a. Before applying to the Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy (DON).
- b. Petitioner enlisted in the Marine Corps and began a period of active duty service on 27 March 1991. See enclosure (2).
- c. On 3 August 1993, Petitioner received non-judicial punishment (NJP) for two specifications of failure to go to his prescribed place of duty in violation of Article 86, Uniform Code of Military Justice (UCMJ).² His punishment consisted of a reduction to E-2 and the forfeiture of \$50 pay per month for two months.³ See enclosure (3).
- d. On 21 January 1994, the suspension of Petitioner's forfeitures adjudged during his NJP of 3 August 1993 (see paragraph 3c and footnote 3 above) was vacated and the punishment was ordered executed.⁴ See enclosure (4).
- e. By memorandum dated 6 October 1993, the DON Physical Evaluation Board informed the Commandant of the Marine Corps that Petitioner had been determined medically unfit for continued service and recommended that he be medically separated with a 20 percent disability rating.⁵ See enclosure (5).
- f. In early December 1993, Petitioner knowingly received stolen property belonging to a fellow Marine of a value in excess of \$2,500.00. Specifically, he received a JVC stereo system and speakers; a KLH computer, monitor, and keyboard; and a Panasonic 27" color television, all of which had been stolen from the Marine's Bachelor Enlisted Quarters. See enclosure (6).
- g. On 7 February 1994, Petitioner made a false official statement to a law enforcement officer investigating the theft of the property described in paragraph 3f above. Specifically, he lied about the date that he moved into his apartment, presumably to deceive the investigator regarding his receipt of property. See enclosure (6).
- h. In June 1994, Petitioner was convicted by a general court-martial (GCM), pursuant to his pleas, of violations of Articles 134 and 107, UCMJ, for the conduct described in paragraphs 3f

² Petitioner allegedly failed to go to the Morale, Welfare, and Recreation Building at the time prescribed on 8 July 1993, and then failed to appear at his NJP proceedings at the time it was originally scheduled.

³ The adjudged forfeitures were suspended for six months.

⁴ It is not apparent from the record what misconduct prompted the vacation of the suspension of Petitioner's adjudged punishment.

⁵ Other evidence in the record suggests that Petitioner was found to be unfit due to a knee injury.

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and 3g respectively.⁶ He was sentenced to 90 days of confinement; to forfeit all pay and allowances; to be reduced to E-1; and to a bad-conduct discharge (BCD). See enclosure (6).

i. On 28 October 1994, the convening authority approved the GCM sentence described in paragraph 3h above as adjudged. See enclosure (6).

j. On 10 October 1995, the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) affirmed the findings and sentence adjudged by the GCM and approved by convening authority.⁷ See enclosure (7).

k. By memorandum dated 18 January 1996, Petitioner's command was informed that no petition for review had been received from Petitioner, so appellate review of his case was considered complete, and a supplementary court-martial order should therefore be prepared to order the execution of his approved BCD. See enclosure (8).

l. On 22 January 1996, Petitioner's BCD was ordered to be executed. See enclosure (9).

m. On 25 January 1996, Petitioner's BCD was executed. See enclosure (2).

n. Petitioner contends that his BCD was unjust and did not accurately reflect his overall integrity and exemplary service. He further contends that it failed to adequately consider the mitigating circumstances of his offense, and that his personal and professional rehabilitation over the past 25 years is worthy of clemency. Specifically, Petitioner stated that his misconduct was a lapse in judgment which occurred under emotionally and physically challenging circumstances, to include his lack of resources and understanding of his medical discharge process. He claims to have worked as a "journeyman wireman electrician" since his discharge, "contributing to public safety and demonstrating accountability and discipline." His application is supported by character references from a co-worker who attests to his work ethic, reliability and professionalism, and from his daughter attesting to his integrity and dedication to his family. See enclosure (1).

MAJORITY CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that clemency is warranted in the interest of justice.

The Majority found no error or injustice in Petitioner's BCD when it was executed. He pled guilty to serious misconduct, and his conviction and the resulting sentence for that misconduct was upheld on appellate review. Contrary to Petitioner's claim, the sentence adjudged was not unduly harsh given the circumstances or the misconduct to which he admitted. His knowing acceptance of stolen property was bad enough, but the fact that the property in question belonged to a fellow Marine was a significant aggravating factor which justified the punitive discharge adjudged. Additionally, Petitioner's service record before this misconduct was not as

⁶ Multiple other charges to which Petitioner pled not guilty were withdrawn upon his guilty plea to the charges of which he was convicted.

⁷ The NMCCA rejected Petitioner's speedy trial motion pursuant to Article 10, UCMJ, on its merits.

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“exemplary” as he claims, as he had prior NJP and further misconduct which justified the vacation of the suspended portion of the punishment he received at the NJP.

In addition to reviewing the circumstances of Petitioner’s BCD for error or injustice at the time it was executed, the Majority also considered the totality of the circumstances to determine whether clemency is warranted in accordance with reference (b). In this regard, the Majority considered, among other factors, the mitigating factors described by Petitioner, to include the emotional and physical challenges that he was experiencing during a period of transition and his pending medical separation; that Petitioner was found unfit for continued service and was pending a medical separation due to a knee injury at the time of the misconduct which resulted in his BCD; Petitioner’s long post-service record of employment and service to his community, which reflects favorably upon his rehabilitation and character; the character references provided for the Board’s 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 determined that modest clemency is warranted in the interests of justice.

Although the Majority found the mitigating circumstances to sufficiently outweigh the severity of the misconduct for which Petitioner was discharged to justify modest clemency, it did not find those circumstances to so significantly outweigh the severity of Petitioner’s misconduct to justify the extraordinary relief that he requests. As discussed above, the misconduct for which Petitioner was convicted was severe and deserving of a BCD. Given the circumstances, the Majority could not justify upgrading Petitioner’s discharge characterization to fully honorable as he requested.

Finally, the Majority identified an administrative error in Petitioner’s DD Form 214 unrelated to his request for relief. Specifically, Petitioner’s DD Form 214 did not record Petitioner’s time lost during his confinement or while he was in an involuntary appellate leave status following his release from confinement in block 29. As a result of this omission, Petitioner is erroneously credited with more than 19 months of active service in block 12 of his DD Form 214.⁸

MAJORITY RECOMMENDATION:

Based upon the conclusions discussed 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 Petitioner be issued a new DD Form 214 reflecting that his service ending on 25 January 1996 was characterized as “General (under honorable conditions).” Upon preparation of this new DD Form 214, Headquarters, Marine Corps (HQMC) may wish to correct the administrative error pertaining to Petitioner’s lost time. However, this is not a correction directed by the

⁸ Petitioner’s GCM adjourned on 10 June 1994 upon announcement of a sentence which included confinement and a BCD. The Board presumes that Petitioner entered confinement on the same date, and that he transitioned into involuntary appellate leave upon the date of his release from that confinement. Evidence in the record reflects that Petitioner was assigned to the Navy and Marine Corps Appellate Leave Activity while the appellate review of his GCM conviction was pending, which suggests that he was, in fact, in an involuntary appellate leave status.

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Board.⁹ All other entries reflected in 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 the evidence of record, the Minority of the Board found insufficient evidence of any material error or injustice warranting relief.

The Minority concurred with the Majority's conclusion that there was no error or injustice in Petitioner's BCD at the time it was administered, and noted the same administrative error identified by the Majority above.

Like the Majority, the Minority also considered the totality of the circumstances to determine whether clemency 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 found the severity of Petitioner's misconduct to far outweighed any and all factors which might have weighed in favor of clemency. In this regard, the Minority noted that Petitioner's exaggerated the quality of his service in the Marine Corps. His service was far from "exemplary" prior to the misconduct resulting in his BCD as he claimed. He had a prior NJP for violations of Article 86, UCMJ, and had the suspension of some of that NJP vacated upon his engagement in further misconduct. He was also not recommended for promotion due to his noncompliance with Marine Corps weight standards. Petitioner also claimed to have served honorably from March 1991 until 1995. However, he committed the misconduct in question in December 1993 and spent the remainder of his Marien Corps service either pending court-martial for that misconduct, in confinement as a result of that court-martial, or on appellate leave following that court-martial. As such, less than three years of Petitioner's service in the Marine Corps could credibly be described as honorable. Contrary to his contention, the totality and quality of Petitioner's service actually weighed against clemency in his case. Petitioner further claimed that clemency is warranted because he "voluntarily forfeited a medical discharge and its associated benefits due to a lack of resources and knowledge at the time." This claim, however, was inaccurate. Petitioner was not medically discharged because he committed serious misconduct before his recommended medical discharge could be acted upon. He did not "voluntarily" forfeit a medical discharge – he was denied the medical discharge recommended for him because he knowingly received stolen property from a fellow Marine and then lied about his role in this theft to impede the investigation into this crime. Finally, the severity of the misconduct for which Petitioner received a BCD is far greater than he suggests. Taking part in a scheme to deprive a fellow Marine of his personal property is not only wrong but is the type of misconduct which undermines the trust that must exist among Marines for the Marine Corps to effectively accomplish its mission. It was also not misconduct of the type which can be reasonably be

⁹ It is the Board's policy not to direct correction of a naval record in any manner which may be perceived as unfavorable to the applicant. This is an administrative error which may be corrected at HQMC's discretion.

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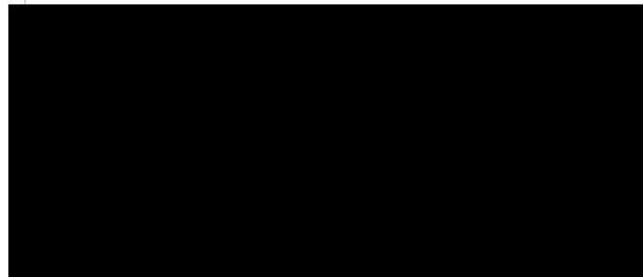
attributed to a momentary “lapse in judgment” as he claims. Petitioner received the stolen property of a fellow Marine in December 1993 and then tried to deceive law enforcement about his role two months later in February 1994. This was on-going and deliberate misconduct; not the momentary lapse of judgment that Petitioner described. The Minority acknowledged Petitioner’s post-service accomplishments and applauds Petitioner’s apparent rehabilitation, but simply found the mitigating circumstances to fall far short of that necessary to justify the recharacterization of his well-earned BCD.

MINORITY RECOMMENDATION:

Based upon the conclusions discussed above, the Minority of the Board recommends that no corrective action be taken on Petitioner’s naval record. The Minority did, however, recommend that HQMC be made aware of the administrative error identified in Petitioner’s DD Form 214 to take action as it deems appropriate.

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 Section 6e(1)(b) of Enclosure (1) to reference (c).

6/11/2025



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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

— MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the corrective action recommended by the Majority above. I further direct that HQMC take action to correct the administrative error in Petitioner's DD Form 214 identified by the Board.)

X 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. However, I request that the Board make HQMC aware of the administrative error it identified in Petitioner's DD Form 214 to take action as HQMC deems appropriate.)

— Petitioner's Request Approved (Full Relief – I concur with the Majority conclusion that clemency is warranted given the totality of the circumstances, but do not believe that the clemency recommended by the Majority goes far enough to serve the interests of justice. Specifically, I found that the mitigating circumstances did so far outweigh the severity of Petitioner's misconduct to justify the relief that he requested. Accordingly, I direct the relief recommended by the Majority, except that Petitioner's service ending on 25 January 1996 is to be characterized as "Honorable." Petitioner shall also to be issued an Honorable Discharge certificate. I further direct that HQMC take action to correct the administrative error in Petitioner's DD Form 214 identified by the Board.)