



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

Docket No. 5127-25
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1900.16 (MARCORSEPMAN)
(c) MCO P1400.32D W/CH 1-2 (Enlisted Promotions)

Encl: (1) DD Form 149 w/enclosures
(2) Navy Interim Form, Statement of Trial Results, 27 Apr 22
(3) Administrative Discharge Board Report, 13 Jun 23
(4) DD Form 214
(5) NMCCA, U.S. v. [Petitioner], 4 Sep 24
(6) Correction to DD Form 214
(7) Advisory Opinion
(8) Post-Trial Action, 19 May 22
(9) NAVMC 10131, Unit Punishment Book, 20 Aug 21
(10) NAVMC 118(11), Administrative Remarks, 30 Jun 23
(11) NAVMC 118(11), Administrative Remarks, 6 Jul 23
(12) NAVMC 118(11), Administrative Remarks, 6 Jul 23 (RE-4B)
(13) USMC Fitness Report (1610), FITREP ID #3624536
(14) USMC Fitness Report (1610), FITREP ID #3624048
(15) USMC Fitness Report (1610), FITREP ID #3623694
(16) Record of Conviction by Court-Martial (1070)

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 naval record be corrected by: (1) removing all references to misconduct, including his special court-martial (SPCM) charges and conviction, his administrative discharge board (ADB), any adverse counseling, and denial of his reenlistment, from his Official Military Personnel File (OMPF), (2) entitling him to promotion to E-8, effective on the date he originally would have been promoted, (3) providing him entitlement to all proper pay, housing allowance, basic allowance for subsistence, uniform allowance, and any applicable special duty pay and reenlistment bonuses for the period of 8 July 2023 until the date of the Board's decision, or in the alternate, 30 November 2024, the date he was transferred to the Marine Corps Reserves, and (4) transferring him to the Fleet Marine Corps Reserve (FMCR) list, effective the date of the Board's decision, or in the alternate, 30 November 2024, and providing FMCR pay from the date of his separation until the date of transfer to the FMCR, or in the alternate, ordering a "Special

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Selection Board” to consider him for selection to E-8, and if selected, entitlement to all pay and allowance from the date he would have been promoted.

2. The Board, consisting of [REDACTED] reviewed Petitioner’s allegations of error and injustice on 18 February 2025 and, pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner’s naval records, and applicable statutes, regulations, and policies, as well as the 15 July 2025 advisory opinion (AO) provided by Headquarters, Marine Corps (HQMC) Military Personnel Law Branch. The AO was considered favorable to Petitioner.

3. Before applying to this Board, with exception to his requests as related to fitness reports and promotion, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner’s allegations of error and injustice, finds the following:

a. Petitioner enlisted in the U.S. Marine Corps and commenced active duty on 8 November 2004. In 2022, Petitioner was serving on active duty in the paygrade of E-7. On 27 April 2022, Petitioner was convicted at a SPCM of violating Article 112a of the Uniform Code of Military Justice (UCMJ).

b. On 13 June 2023, Petitioner was subjected to an ADB, resulting in substantiation of misconduct for drug abuse and a recommendation for retention.¹

c. On 8 July 2023, Petitioner was discharged due to End of Active Service. He was not recommended for reentry and assigned a RE-4B reentry code.

d. On 4 September 2024, the Navy and Marine Corps Court of Criminal Appeals (NMCCA), set aside Petitioner’s SPCM conviction and dismissed the case with prejudice.² Enclosure (5).

e. On 12 December 2024, Petitioner’s DD Form 214 was corrected, indicating restoration of rank to E-7 and transfer to the FMCR.

f. As part of the Board’s review, the Board considered enclosure (7). The AO states in pertinent part: (1) all adverse material related to Petitioner’s SPCM and alleged wrongful drug use should be removed from his OMPF, (2) although administrative proceedings are distinct from court-martial proceedings, as each serve a different purpose and require a different burden of proof, in Petitioner’s case, because the ADB was bound by the SPCM conviction to substantiate misconduct, the two proceedings are inextricably connected, and thus the ADB should also be removed from Petitioner’s OMPF, (3) because Petitioner’s SPCM conviction also required issuance of an adverse fitness report, the Board should consider removing the fitness

¹ The SPCM conviction was binding on the ADB, requiring substantiation of misconduct.

² The NMCCA found the SPCM conviction was against the weight of the evidence.

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report from Petitioner's OMPF as well³, (4) Petitioner's request for appropriate active duty constructive credit and transfer to the FMCR, which would enable retroactive pay and allowances, should be granted, and (5) regarding promotion, Petitioner was never selected for promotion to E-8, and thus is not entitled to promotion, but should be considered for promotion by an Enlisted Remedial Selection Board (ERSB) after removal of all erroneous adverse materials from his OMPF. The AO additionally advised that consideration for remedial promotion is not automatic, and must be submitted to the Commandant of the Marine Corps (CMC) Manpower Management Division Enlisted Promotions section (MMPR-2), after completion of Board action, and that any remedially selected Marine given a date of rank older than six months, must petition the Board for correction of the effective day for payment of backpay and allowances. However, in the interest of justice and administrative efficiency, the AO recommended the Board correct the record to reflect that Petitioner applied for ERSB as of the date of enclosure (1), and if selected for E-8, he be awarded backpay and allowances from the date he would have been selected.

g. Petitioner contends: (1) subsequent to the NMCCA decision, referenced in paragraph (d), above, HQMC Manpower and Reserve Affairs (M&RA), restored him to E-7, paid him back pay and allowances, and granted him constructive active duty credit from 8 July 2023 until 30 November 2024 (the date he would have attained retirement eligibility), and transferred him to the FMCR. However, when he requested retroactive pay and allowances corresponding to the constructive active duty credit, M&RA concluded it had erroneously transferred him to the FMCR without authority, revoked his transfer, cancelled his payments, denied his request for retroactive pay and allowances, and directed him to petition the Board for constructive credit, (2) he submitted a retirement/reenlistment request but it was either denied or never forwarded to HQMC, as required⁴, (3) his OMPF must be cleansed of all adverse materials because he was exonerated of the SPCM conviction, and (4) given that there is no longer a SPCM conviction, an immediate audit of his pay and allowance, and pay of all back pay and allowances, is necessary.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an error or injustice warranting partial relief.

The Board concurred with the AO, with two exceptions: (1) regarding enclosure (13), Petitioner's adverse fitness report, as the AO identified, Petitioner has not exhausted available administrative remedies. Thus, the Board did not concur with the AO recommendation that enclosure (13) should be removed from Petitioner's OMPF in its entirety. Rather the Board concluded that any comments related to the SPCM, wrongful drug use, and disciplinary action related thereto, in addition to associated adverse marks, should be removed from Petitioner's fitness reports, and Petitioner should exhaust administrative remedies through HQMC for any

³ The AO stated Petitioner should have requested removal of the fitness report by the Performance Evaluation Review Board (PERB), which he did not do, but recommended the Board nonetheless remove the report in the interest of administrative efficiency.

⁴ Reference (3), (Enlisted Promotions), requires retention of Marines with 18 years of active service, to achieve retirement eligibility, unless separated in accordance with reference (2), the MARCORSEPMAN.

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further desired modifications, and (2) regarding his request for promotion, Petitioner must also exhaust available administrative remedies regarding his request for a Special Selection Board.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

(1) Remove any reference to the SPCM from Petitioner's OMPF, including, but not limited to, enclosure (2), the Statement of Trial Results, enclosure (8), the Post-Trial Action, enclosure (9), the Unit Punishment Book, and enclosure (16), the Record of Conviction by Court-Martial.

(2) Remove from Petitioner's OMPF enclosure (10), the Administrative Remarks Page 11 entry, dated 30 June 2023.

(3) Remove from Petitioner's OMPF enclosure (11), the Administrative Remarks Page 11 entry, dated 6 July 2023.

(4) Remove from Petitioner's OMPF enclosure (12), the Administrative Remarks Page 11 entry, dated 6 July 2023, pertaining to reentry code of RE-4B.

(5) Remove from enclosure (13), the Fitness Report covering the period of 1 April 2023 to 8 July 2023, any comments related to the SPCM, wrongful drug use, disciplinary action, and associated adverse marks and justifications.

(6) Remove from enclosure (14), the Fitness Report covering the period of 21 May 2022 to 31 March 2023, any comments related to the SPCM, wrongful drug use, disciplinary action, and associated adverse marks and justifications.

(7) Remove from enclosure (15), the Fitness Report covering the period of 24 August 2021 to 20 May 2022, all comments related to the SPCM, wrongful drug use, disciplinary action, and associated adverse marks and justifications.

(8) Grant Petitioner constructive active duty credit for the period of 9 July 2023 through 30 November 2024.

(9) Transfer Petitioner to the Fleet Marine Corps Reserve (FMCR) list, effective 30 November 2024.

That the Defense Finance and Accounting Service complete an audit of Petitioner's pay records to determine amounts due, if any.

That any other material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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

3/5/2026

