



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

BJG  
Docket No: 7889-97  
19 August 1999

MR [REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested removal of your fitness reports for 1 November 1992 to 1 March 1993 and 1 November 1993 to 28 February 1994, promotion to pay grade E-8 effective 1 December 1993 and to E-9, and setting aside of your general discharge of 8 March 1994.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 August 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Headquarters Marine Corps (HQMC) Military Law Branch (JAM2 and 3) dated 27 August 1997, 23 February 1998, 27 January 1999, and 22 March 1999; the HQMC Performance Evaluation Review Board (PERB) dated 17 October 1997; the HQMC Separation and Retirement Branch (MMSR-6J) dated 30 December 1997 and 10 May 1999; the HQMC Promotion Branch (MMPR-2) dated 22 January 1998 and the memorandum for the record dated 17 August 1999, copies of which are attached. They also considered your counsel's rebuttal letters dated 9 March 1998 and 5 March and 14 May 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice.

The Board substantially concurred with the advisory opinions dated 27 January and 10 May 1999 in finding that your discharge should stand. They were unable to find you did not illegally use drugs. The fact that a court-martial made no finding that you illegally used drugs did not convince the Board that you did not commit such misconduct.

Your leave and earnings statement at enclosure (11) to your application did not prove you were promoted to pay grade E-8. In light of the administrative separation board determination that you did illegally use drugs, the Board found that your promotion was not warranted, and that a statement from you regarding your promotion would not have made any difference.

Since the Board was unable to find that you did not illegally use drugs or that your discharge was unwarranted, they had no basis to remove the contested fitness reports.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures

Copy to:  
Alice L. Cate, Esq.

5800  
JAM3SJA TO CMC COMMENT on MMER r/s of 10 Jul 97

AUG 27 1997

Subj: PERFORMANCE EVALUATION REVIEW BOARD OF (FORMER) GYSGT  
[REDACTED] SMCRef: (a) MCO P1900.16D  
(b) 10 U.S.C. Sec. 1176

1. We are asked to provide an opinion as to whether Petitioner was improperly administratively discharged by the Commanding General, I Marine Expeditionary Force, FMF, following his administrative discharge board. Petitioner asserts his discharge was improper and requests to be re-instated to active duty, promoted to E-9, and to receive corresponding backpay.
2. We recommend relief be granted in part. Our analysis follows.
3. Background. Petitioner was initially identified by a urinalysis test in February 1992, as having illegally used cocaine and marijuana. On 2 November 1993, Petitioner was notified by the Commanding Officer, 9th Communication Battalion, I Marine Expeditionary Force, that he intended to recommend that Petitioner be discharged pursuant to paragraph 6210.5 of reference (a) (misconduct due to drug abuse). An administrative discharge board was subsequently convened on 7-8 December 1993 where Petitioner was present and represented by military and civilian counsel. The administrative discharge board found unanimously that the allegation set forth in the notification was supported by a preponderance of the evidence and recommended that Petitioner be administratively separated with a general discharge, under honorable conditions. On 8 February 1994, the Commanding General, I Marine Expeditionary Force, directed that Petitioner be separated with a general discharge.
4. As provided in the Staff Judge Advocate's recommendation dated 3 February 1994, Petitioner had completed 5 years, 6 months of active service on his current enlistment which began 5 May 1988. The recommendation further noted that prior to his 5 May 1988 re-enlistment, Petitioner had completed 13 years, 2 months of active service. The recommendation did not, however, specifically advise the Commanding General that Petitioner had completed a total of 18 years, 8 months of prior active service and was, therefore, protected from involuntary separation absent approval by the Commandant of the Marine Corps. See paragraph 6307.1c of reference (a).
5. On 8 February 1994, after considering the Staff Judge Advocate's review and recommendation, the Commanding General improperly ordered Petitioner administratively discharged by

Subj: PERFORMANCE EVALUATION REVIEW BOARD OF (FORMER) GYSGT  
S [REDACTED] SMC

reason of misconduct due to drug abuse. The Commanding General further ordered that Petitioner's administrative discharge be characterized as general under honorable conditions and that it be effected within 20 days. Petitioner was thereafter discharged on 8 March 1994. On the day of his discharge, Petitioner had completed 19 years and 20 days of active service. See DD 214 completed on 8 March 1994.

6. We find no substantive error regarding the administrative discharge board procedures themselves, however, we do find that the Commanding General, I Marine Expeditionary Force, did not have the authority to administratively discharge Petitioner because Petitioner had more than 18 years of active service before involuntary separation procedures were initiated. Pursuant to paragraph 6307.1c of reference (a), when the member being involuntarily separated has 18 years or more service, "the separation authority is the Commandant of the Marine Corps." When reviewing the administrative discharge board's recommendation, CMC considers whether the Marine should be immediately separated, the proper characterization of the discharge, whether to suspend the recommended administrative discharge, or whether the Marine has future potential in the Fleet Marine Corps Reserve. The SJA's recommendation dated 3 February 1994, did not address this provision regarding this special procedural protection afforded 18 year Marines facing administrative separation. Accordingly, we believe that Petitioner's administrative discharge and the corresponding service characterization are invalid.

7. Recommendation. We recommend that you direct the Commanding General, I Marine Expeditionary Force, to re-submit Petitioner's administrative discharge separation package to CMC for review and any further appropriate action. Since it is unclear whether Petitioner should be considered as having been separated at the end of his enlistment contract or whether he has yet to be properly discharged (given the aforementioned analysis), we recommend this issue be forwarded to MMSR to determine Petitioner's present active duty status and whether he is entitled to constructive service time beyond his last enlistment contract.

8. Additionally, we recommend MMPR determine whether this error had any effect on Petitioner's apparent lack of suitability for promotion to pay grade E-8 in 1993. In this regard, we note the record reflects that Petitioner's promotion to pay grade E-8 was held in abeyance in 1993 per the direction of MMPR-2 pending completion/results of Petitioner's then pending special court-martial. The administrative discharge board subsequently determined, unanimously, that the evidence presented established that Petitioner had committed the misconduct alleged, i.e., illegal use of cocaine and marijuana. The record further

Subj: PERFORMANCE EVALUATION REVIEW BOARD OF (FORMER) GYSGT  
[REDACTED] MC

reflects that the then Commanding Officer, 9th Communications Battalion concurred in the Board's findings and recommended discharge under other than honorable conditions.

9. Following the receipt of comments from MMSR and MMPR, we recommend that the Performance Evaluation Review Board or the Board for the Correction of Naval Records return the matter to this branch for additional review and comment. Point of contact in this matter [REDACTED] at [REDACTED].

[REDACTED]

By direction



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO  
1400  
JAM3

23 FEB 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR THE CORRECTION  
OF NAVAL RECORDS

Subj: ADVISORY OPINION IN CASE OF (FORMER) GYSGT  
[REDACTED] USMC

- Ref: (a) SJA to CMC comment on MMER r/s of 10 Jul 97
- (b) Memo for BCNR 1400/4 MMPR-2 of 22 Jan 98
- (c) Memo for BCNR 1900 MMSR-6J of 30 Dec 97
- (d) MCO P1900.16D
- (e) 10 U.S.C. 1169
- (f) 10 U.S.C. 1552

1. In reference (a) we reviewed the propriety of Petitioner's discharge and recommended the Enlisted Promotions Branch (MMPR) and the Separations and Retirement Branch (MMSR) provide opinions as to Petitioner's present active duty status and his eligibility for promotion. See references (b) and (c). We have reviewed those additional opinions and conclude that Petitioner should be granted partial relief.

2. It is necessary to correct an inaccuracy in reference (b). There MMPR indicates that Petitioner received a General (under honorable conditions) discharge as the result of a special court-martial. That is not correct. Petitioner's separation was the result of administrative separation proceedings, not a special court-martial.

3. As stated in reference (a), Petitioner was improperly discharged. For those enlisted Marines involuntarily separated with over 18 years of service, the Commandant of the Marine Corps (CMC) is the separation authority under paragraph 6307.1c of reference (d). Petitioner was separated with 19 years, 20 days of service, by the Commanding General, I Marine Expeditionary Force (CG I MEF). Petitioner's separation clearly violated references (d) and (e). Relief is, therefore, appropriate.

3. In light of the responses provided in references (b) and (c), we have reconsidered our previous view that the matter should be referred to the Commandant of the Marine Corps. In essence this course of action would treat CG I MEF's separation of Petitioner as a mere recommendation. However, because Petitioner's discharge has been effected, albeit erroneously, the matter is more appropriately referred to the Secretary of the Navy, acting through the Board for Correction of Naval Records (BCNR).

Subj: ADVISORY OPINION IN CASE OF (FORMER) GYSGT  
[REDACTED] USMC

Reference (f) gives the Secretary (and BCNR on his behalf) broad latitude to correct errors or injustices pursuant to reference (f). Consequently, we defer to BCNR as to what relief should be granted.



Lieutenant Colonel  
U.S. Marine Corps  
Head, Military Law Branch  
By direction of the  
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070  
JAM2  
27 JAN 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF (FORMER) GUNNERY SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

Ref: (a) MCO P1900.16 (MARCORSEPMAN)  
(b) Manual for Courts-Martial, United States (1984)  
(c) JAGINST 5800.7C (JAGMAN)

1. We are asked to provide an opinion regarding the propriety of  
Petitioner's administrative discharge on 8 March 1994 for  
misconduct due to drug abuse.

2. We find no legal defect in the processing of Petitioner's  
case up to the point that, as discussed in our comment of 10 July  
1997 and our advisory opinion of 23 February 1998, the Commanding  
General, I Marine Expeditionary Force (CG I MEF) improperly acted  
as separation authority instead of forwarding the case to the  
Commandant of the Marine Corps (CMC) for action as required under  
reference (a). Although we defer to the Board for Correction of  
Naval Records on the issue of whether Petitioner is entitled to  
relief, we do not believe that this lone technical defect could  
have prejudiced Petitioner. It is extremely unlikely, in our  
view, that a Gunnery Sergeant with a substantiated instance of  
drug abuse would not have been discharged on that basis.

3. Background

a. On 24 March 1993, a single specification alleging that  
Petitioner violated Article 112a, Uniform Code of Military  
Justice (UCMJ) by using cocaine was referred for trial by special  
court-martial. On 13 August, the military judge granted  
Petitioner's motion to delay the trial until authorization to  
grant immunity to a civilian witness could be obtained from the  
United States Attorney General. On 15 October, the Attorney  
General authorized the immunity grant. On 2 November, Petitioner  
was notified that he was going to be processed for administrative  
separation for misconduct due to drug abuse, and on 1 December  
the charge was withdrawn from the court-martial. Petitioner's  
three-member Administrative Discharge Board sat from 7 to 8  
December, found unanimously that the allegation of drug use was  
substantiated, and recommended separation with a general (under



Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF (FORMER) GUNNERY SERGEAN [REDACTED]  
[REDACTED] U.S. MARINE CORPS

honorable) characterization of service. Petitioner was discharged by CG I MEF on 8 March 1994.

b. On 20 April 1997, Petitioner applied for numerous measures of relief which are the subject of separate advisory opinions prepared by this and several Headquarters Marine Corps staff divisions over the past two years. The crux of Petitioner's complaint is that the cocaine charge was improperly withdrawn from the court-martial because the Government knew it could not prove the charge in court. According to Petitioner, the convening authority chose instead to pursue the matter before an administrative board, where the burden of proof is by a preponderance rather than beyond reasonable doubt and where rules of evidence and constitutionally required procedure do not apply. Petitioner maintains that, apart from CG I MEF's incorrectly acting as separation authority, this purported impropriety warrants complete restoration.

c. Related to this complaint, Petitioner argues that the military judge presiding over his trial influenced the convening authority to withdraw the charge in favor of an alternative resolution, depriving him of his right to due process. In support, Petitioner offers an affidavit from his civilian counsel stating that she was with the trial counsel when the military judge called to suggest that the convening authority withdraw the charge. This affidavit also notes that, during the last session of court before the charge was withdrawn, the military judge admitted making the call. Petitioner next notes that a verbatim transcript of this last session was not maintained, implying some bad faith on the Government's part.

4. Analysis

a. Petitioner's argument about improper conduct by the military judge has neither factual nor legal merit. First, there is nothing improper, let alone sinister, in the fact that a transcript could not be made of the session at which the judge admitted making the comment to trial counsel, even though all of the previous sessions were transcribed. Since the case resulted in a withdrawal of the charge, the Government was never obliged under Rule for Court-Martial 1103(e) of reference (b) to prepare a verbatim transcript of any portion of the court-martial proceedings. Accordingly, it was unnecessary under paragraph 0150b of reference (c) to retain the audio recordings and stenographer's tapes. Moreover, the transcription of sessions up to and including the granting of the defense motion is

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF (FORMER) GUNNERY SERGEANT ██████████  
██████████ U.S. MARINE CORPS

unremarkable. It is common practice to transcribe motions sessions for a judge to use in preparing his ruling. It is also common to transcribe sessions related to rulings which the Government may reasonably be expected to contest through interlocutory appeal. Granting an indefinite continuance based on witness production is such an issue.

b. There is nothing remarkable about a judge commenting to a trial counsel concerning the difficulties that may be encountered in putting on a given case. Moreover, even were a judge to go beyond the bounds of detached observation and did abandon his impartiality by assisting a trial counsel, such improper conduct would taint the court-martial, not an entirely separate proceeding such as an administrative board. Finally, even viewed in the light most favorable to Petitioner, there is no evidence to suggest any improper contact between the judge and the convening authority. Since the law presumes that military judges know and apply the law, and since there are no indications that the judge in Petitioner's case failed to do so, speculation on this point should be ignored.

c. Petitioner's argument that he was denied due process because he could not contest the charge at a court-martial is without merit. The amount of process that is due depends on the type of proceeding, and less process is due an administrative board respondent than a court-martial accused. Petitioner's assertion that he was somehow entitled to contest the charge in court rather than in an administrative board ignores the substantive distinction between a court-martial and an administrative board. Courts-martial are criminal forums created to enforce discipline by punishing violations of the law; administrative boards are non-criminal forums designed to enforce personnel policy. They are different in kind, not degree. Petitioner's argument also ignores the fact that the withdrawal inured to his benefit, significantly reducing his potential jeopardy by removing the possibility of criminal conviction and punishment. In essence, Petitioner was put in the position he would have been in had the convening authority taken the extremely lenient course of not referring the charge to trial; paragraph 6210.5 of reference (a) made separation processing in Petitioner's case mandatory. Finally, Petitioner's argument presupposes that he would have been acquitted at a court-martial. That is purely speculative.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF (FORMER) GUNNERY SERGEAN [REDACTED]  
[REDACTED] S. MARINE CORPS

d. There is no evidence to suggest any impropriety in the administrative proceeding itself. Failure to forward the case to CMC for final action constitutes the only procedural defect in the handling of Petitioner's case. As noted, however, it is very unlikely that the failure prejudiced Petitioner's case.

5. Conclusion. Accordingly, for the reasons set forth above, we do not support granting any relief unless the Board for Correction of Naval Records believes Petitioner was actually prejudiced by the Government's failure to forward his case to CMC for final action.

[REDACTED]

Head, Military Law Branch  
Judge Advocate Division



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

7889-97

IN REPLY REFER TO:

1070  
JAM2

22 MAR 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF (FORMER) GUNNERY SERGEANT [REDACTED]  
[REDACTED] U.S. MARINE CORPS

Ref: (a) PHONCON CMC (JAM) [REDACTED] BCNR (Performance Section)  
[REDACTED] of 22 Mar 99  
(b) PHONCON CMC (JAM) [REDACTED] [REDACTED]  
of 22 Mar 99  
(c) PHONCON CMC (JAM) [REDACTED] CMC (MMER)  
22 Mar 99

1. Reference (a) clarified that BCNR does not require legal review of the subject case beyond our reviews of 10 July 1997, 23 February 1998, and 27 January 1999. Rather, BCNR requests review by the cognizant staff section that would have reviewed the case in the normal course of business had Petitioner not been discharged by CG I MEF on 8 March 1994. Reference (b) established that CMC (MMSR-3) would have reviewed Petitioner's proposed separation, and is prepared to do so now. Reference (c) advised CMC (MMER) that rerouting was appropriate.

2. This case is returned to CMC (MMER) for tasking to CMC (MMSR-3).

[REDACTED]

Head, Military Law Branch  
Judge Advocate Division

7889-97



EPS 24

DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS

WASI Johnson, Stephen L.



\*07889-97 \*

IN REPLY REFER TO:  
1610  
MMER/PERB  
17 Oct 97

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FORMER

[REDACTED]

Ref: (a) [REDACTED] Form 149 of 20 Apr 97  
(b) MCO P1610.7D w/Ch 1-6

1. Per MCO 1610.11A, the Performance Evaluation Review Board, with three members present, met on 16 October 1997 to consider [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:


- a. Report A - 921101 to 930301 (CD)
- b. Report B - 931101 to 940228 (EN)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner, via his legal counsel, has challenged his administrative discharge from the Marine Corps and requested restoration to active duty, restoration of promotion to the grade of Master Sergeant, promotion to the grade of Master Gunnery Sergeant, and all back pay and allowances. Included in this request, although the reasons therefore have not been specified, is a request for the removal of the fitness reports identified herein. Lacking anything to the contrary, the Board must presume the basis for challenging the fitness reports is reference to both drug use/abuse and the administrative discharge.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. Succinctly stated, unless relief is granted regarding the administrative discharge, the reports should remain valid as filed. Should that discharge, however, be determined to be flawed, then removal of the reports is both recommended and warranted.

4. The board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part [REDACTED] official military record.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FORMER  
MARINE GUNNERY 

5. The case is forwarded for final action.



Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps

7889-97



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1900  
MMSR-6J  
30 Dec 97

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED]  
[REDACTED] USMC (RET.)

Ref: (a) MMER Route Sheet of 12Dec97, Docket No. 3590-97

1. The reference requests an advisory opinion on former Gunnery Sergeant [REDACTED] petition to correct his record to show that he was not discharged from the Marine Corps.
2. Former Gunnery Sergeant [REDACTED] was given a General Discharge Under Honorable Conditions on 8 March 1994. He had completed 19 years and 20 days of active service when he was discharged. Former Gunnery Sergeant [REDACTED] has no constructive service. He was, therefore, not retirement eligible when he was discharged. His active duty status ended on the date of discharge.
3. Former Gunnery Sergeant [REDACTED] discharge was done at the command level and not approved or directed by the Commandant of the Marine Corps.
4. We therefore concur with JAM-3, and recommend that former Gunnery Sergeant [REDACTED] administrative discharge separation package be submitted to the Commandant of the Marine Corps for review and appropriate action.

[REDACTED]

Head, Separation and  
Retirement Branch  
By direction of the Commandant  
of the Marine Corps

DEPARTMENT OF THE NAVY  
 HEADQUARTERS UNITED STATES MARINE CORPS  
 3280 RUSSELL ROAD  
 QUANTICO, VIRGINIA 22134-5103



IN REPLY REFER TO:

1910

MMSR-6J

10 May 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
 NAVAL RECORDS

Subj: BCNR REQUEST FOR REVIEW OF THE ADMINISTRATIVE SEPARATION  
 OF FORMER GUNNERY SERGEANT [REDACTED]  
 0193 USMC

Ref: (a) SrMbr, AdminDisBd ltr 1910 AdLaw of 10 Jan 94 w/ends  
 (b) MCO P1900.16E (MarCorSepMan)  
 (c) SJA Comment 5800 JAM3 of 27 Aug 97  
 (d) SJA Memo 1400 JAM3 of 23 Feb 98  
 (e) SJA Memo 1070 JAM2 of 27 Jan 99

1. Board for Correction of Naval Records (BCNR) has requested a review of the administrative discharge of former Gunnery Sergeant [REDACTED] as recommended in reference (a). Gunnery Sergeant [REDACTED] tested positive in two separate urinalysis tests for use of cocaine and marijuana. He was notified by his command of their intention to process him for administrative discharge by reason of misconduct due to drug abuse. Gunnery Sergeant [REDACTED] acknowledged receipt of the notification and exercised his right to present his case before an administrative discharge board. The board unanimously found the evidence supported the allegation of drug abuse and recommended his discharge with a general, under honorable conditions, characterization of service.

2. In the normal course of events, because Gunnery Sergeant [REDACTED] had over eighteen years of active service, the Commanding General, I Marine Expeditionary Force (MEF) would have forwarded the case to the Commandant of the Marine Corps (MMSR-3) per paragraph 6307 of reference (b) with the recommendation that Gunnery Sergeant [REDACTED] be discharged by reason of misconduct due to drug abuse with a general, under honorable conditions, characterization of service.

3. Upon receipt at MMSR-3, Gunnery Sergeant [REDACTED] case would have been routed to the Staff Judge Advocate of the Marine Corps (SJA) for review to determine that all procedures and legalities were followed and that Gunnery Sergeant [REDACTED] had been afforded a fair and just process. In references (c), (d) and (e) the SJA stated that the administrative discharge procedures were proper up until the erroneous discharge by the Commanding General, I MEF. Had the Commanding General, I MEF followed proper procedure and forwarded the case, the SJA would have deemed the entire process as "without legal objection".



4. Based on the recommendation of the command, the unanimous finding and recommendation of the administrative discharge board, the projected recommendation of the Commanding General, I MEF, and the positive review of the SJA, Gunnery Sergeant [REDACTED] case would have been forwarded to the Director, Personnel Management Division (Dir, MM) recommending approval of the discharge of Gunnery Sergeant [REDACTED] with a general, under honorable conditions, characterization of service by reason of misconduct due to drug abuse.

5. Upon receipt of the case by Dir, MM, Gunnery Sergeant [REDACTED] case would have been reviewed in its entirety and based on the evidence, the recommendation for discharge would have been approved. Further, Gunnery Sergeant [REDACTED] active duty terminated on 8 March 1994 with his discharge. He is not entitled to any constructive service beyond that date. Gunnery Sergeant [REDACTED] record, specifically with regard to drug use, does not support promotion and he was removed from the FY 1994 E-8 list.

[REDACTED]

Brigadier General  
United States Marine Corps  
Director, Personnel  
Management Division



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

7889-97

IN REPLY REFER TO:  
140074  
MMPR-2  
22 Jan 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF MR. [REDACTED]  
FORMER MARINE

Ref: (a) MMER Route Sheet of 12 Dec 97, Docket No. 3590-97

1. Former Gunnery Sergeant [REDACTED] was selected for promotion to master sergeant by the 1993 Sergeant Major through Master Sergeant Selection Board; however, his certificate of appointment was being held in abeyance until the completion of a special court-martial (SPCM). As a result of the SPCM, Gunnery Sergeant [REDACTED] received a General Discharge Under Honorable Conditions from the Marine Corps.
2. If Gunnery Sergeant [REDACTED] had remained on active duty after the completion of his SPCM it is unlikely that he would have been promoted because of his recent misconduct. If he had remained qualified for promotion he would have been promoted on 1 January 1994.

[REDACTED]

Assistant Head, Enlisted Promotions  
Branch Promotions  
By direction of the  
Commandant of the Marine Corps

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)  
PERFORMANCE SECTION  
2 NAVY ANNEX, SUITE 2432  
WASHINGTON, DC 20370-5100  
TELEPHONE: DSN 224-9842 OR COMM (703) 614-9842  
FAX: DSN 224-9857, COMM (703) 614-9857, OR (815) 328-0742  
E-MAIL: [REDACTED]@NAVY.MIL

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DATE: 17AUG99

DOCKET NO: 7889-97

PETITIONER (PET): EX-GYSG [REDACTED] USMC

PARTY CALLED: M [REDACTED]

TELEPHONE NUMBER: (703) 784-9204

WHAT I SAID: I ASKED [REDACTED] WHY IT APPEARED THAT MMSR-6J PREPARED THE ADVISORY OPINION IN PET'S CASE RATHER THAN MMSR-3.

WHAT PARTY SAID: [REDACTED] INFORMED ME ALTHOUGH MMSR-6J PREPARED THE ADVISORY OPINION, [REDACTED] USMC, WHO SIGNED THE OPINION, IS IN CHARGE OF THE ENTIRE PERSONNEL MANAGEMENT DIVISION. BOTH MMSR-6J AND MMSR-3 FALL UNDER HIM, AS WELL AS NUMEROUS OTHER CODE SECTIONS.

[REDACTED]