



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

CRS
Docket No: 3714-00
13 March 2001

[REDACTED]

Dear [REDACTED]

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

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 March 2001. 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.

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

The Board found that you enlisted in the Marine Corps on 15 November 1966 at age 19. The record reflects that you were convicted by three summary courts-martial. The offenses included unauthorized absences totalling 60 days and willful disobedience of a lawful order.

Your military record shows that on 18 August 1969 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for five periods of unauthorized absence totalling 170 days and assault. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an undesirable discharge on 3 September 1969.

On 2 August 1977 the Naval Discharge Review Board (NDRB) changed the characterization of the discharge to general under the provisions of the Special Discharge Review Program (SDRP). However, on 14 July 1978 NDRB declined to confirm the general discharge under its uniform discharge review standards, thus denying you veterans' benefits.

On 3 January 1996 this Board reviewed and denied your request to confirm the general discharge.

An advisory opinion furnished by the Bureau of Medicine and Surgery, a copy of which is attached, was unable to pinpoint the exact time of onset of your post traumatic stress disorder (PTSD) and thus was inconclusive as to whether PTSD contributed to your misconduct.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that you had PTSD and that it was a contributing factor in the misconduct which led to your discharge. However, these factors were not sufficient to warrant further recharacterization of your discharge or confirmation of the general discharge given your request for discharge to avoid trial for unauthorized absences totalling more than five months, and your three earlier disciplinary actions. The Board believed that considerable clemency was extended to you when your request to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. Additionally, the Board believed that the relief granted by the NDRB in accordance with the provisions of the SDRP is sufficient in your case. In this regard, even if you did suffer from PTSD at the time of your service, and it became symptomatic during your period of active duty, there is no indication that the disorder caused an inability to know right from wrong or adhere to the right, or that your PTSD was sufficiently mitigating to warrant confirming your general discharge thus making you eligible for benefits administered by the Department of Veterans Affairs. Accordingly, 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

Copy to: Veterans of Foreign Wars

DRS/ARS
3714-00

DEPARTMENT OF PSYCHIATRY
NAVAL MEDICAL CENTER
PORTSMOUTH, VIRGINIA 23708-2197

From: Case Reviewers

To: Chairman, Board of Correction of Naval Records,
Department of the Navy, Washington, D.C. 20370-2197

Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS IN THE CASE OF
[REDACTED]

Ref: (a) Your ltr dtd 05 JUL 00

Encl: (1) BCNR file

1. Pursuant to reference (a) a review of enclosure (1) was conducted to form opinions about the subject petitioner's claims that he suffered from Post Traumatic Stress Disorder at the time of his service and that this was a significant contributing factor to the misconduct that lead to his discharge.
2. Facts of the case:
 - (a) The petitioner served in the United States Marine Corps from 15 November 1966 until 03 September 1969. He served in Vietnam between September 1967 and November 1968 during which time he served in combat and was wounded in the line of duty.
 - (b) Prior to arrival in Vietnam in 1967 the service member was found guilty of breaking restriction after an involvement in a physical altercation with other service members.
 - (c) At the time of his discharge in 1969 he received an other than honorable discharge based on a conviction for disobedience and several periods of unauthorized absence (UA) that occurred after his return from Vietnam. This was later changed to a general discharge under honorable conditions upon review in August 1977.
 - (d) Following discharge the patient received a diagnosis of Post Traumatic Stress Disorder related to his prior military service while under treatment through the Veterans Administration.

3. The following opinions were submitted:

- (a) The evidence of the record indicates that the petitioner suffers from Post Traumatic Stress Disorder. It is impossible based on the available evidence to give the exact time of onset of this condition; however, given the patient's personal account and combat history, it is very likely that onset occurred while he was on active duty.
- (b) It is possible that PTSD was a significant contributing factor to the patient's misconduct that occurred after September 1967; however, due to the lack of supporting documentation this cannot be determined with certainty. The misconduct that occurred prior to September 1967 is not likely to have been related to PTSD since the service member had not been in combat before that time.
- (c) If the petitioner's medical record had been available, a more definitive opinion may have been possible.

4. This review was conducted by LT [REDACTED], MC, USNR under the supervision of LCDR [REDACTED], MC, USN.

[REDACTED]

LT MC USNR

[REDACTED]

LCDR MC USN