



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

CRS
Docket No: 3306-00
19 February 2002



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 13 February 2002. 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 20 January 1971 at age 17. The record reflects that you received two nonjudicial punishments. The offenses included failure to obey a lawful order on two occasions.

On 23 October 1973 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for two periods of unauthorized absence totalling 180 days. 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. 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 the undesirable discharge on 7 December 1973.

On 13 April 1999 the Board denied your request for an upgrade of the undesirable discharge. In May 2000, the Board decided to

reconsider your case based on the evidence you submitted which shows that you have been diagnosed with post traumatic stress disorder (PTSD).

An advisory opinion of 9 June 2001 furnished by the Bureau of Medicine and Surgery, a copy of which is attached, opined that the 20 years following your discharge were chaotic at best, and consistent with someone suffering from PTSD. The opinion further stated that you were suffering from PTSD after returning from Vietnam and that the Board should take this into account when considering your application.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, service in Vietnam, and the contention that PTSD was a contributing factor in the misconduct which led to your discharge. However, the Board concluded that these factors were not sufficient to warrant recharacterization of your discharge given your request for discharge to avoid trial for unauthorized absences totalling six months, and your two 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. 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. Additionally, the Board concluded that it was insufficiently mitigating to warrant recharacterization, given the lengthy total period of your absences. 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

Enclosure

MEMORANDUM

Date: 09 JUN 01

From: [REDACTED] CDR, MC, USNR
To: Board for the Correction of Naval Records

Subj: APPLICATION FOR CORRECTION OF NAVAL RECORDS ICO [REDACTED]

Ref: (a) Chairman, BCNR, ltr TRG, Docket #3306-00, dtd 07MAY01

Encl: (1) BCNR File
(2) Service Record
(3) VA/Civilian Psychiatric Record

1. Per your verbal request and in accordance with ref (a), I have reviewed enclosures (1) through (4).

2. Review of service record indicates that the servicemember did serve for approximately six months in Viet Nam during which time he flew a number of combat missions as a helicopter gunner. Following his tour he returned to CONUS and shortly went AWOL on two occasions for a total of almost 180 days. In a plea bargain he agreed to a dishonorable discharge rather than a court martial.

3. There is no military medical record to review. Review of the VA and civilian records indicate several detailed psychological assessments that are consistent with a diagnosis of Post Traumatic Stress Disorder. I had to discount several comments due to the clear bias they presented.

4. The BCNR file has been supplemented with numerous personal letters attesting to his disabilities and his ability to have overcome them over the years. The general picture given is of a limited youth from a dysfunctional family who returned to a Country in denial about the war.

5. I am troubled by several parts of this file. There seemingly was no medical evaluation done prior to discharge. He reports that during his AWOL periods he was abusing drugs and alcohol, and has included some court documents. This also does not seem to have been evaluated. His combat exposure, though severe, was not at the same level as other vets have reported. It is also hard to imagine in this day that for some 20 years he was disabled by his PTSD symptoms but never came to the attention of the medical establishment. We really have no collateral information regarding these 20 years, except for his own report.

On the other hand the reports from the VA are quite convincing. His troubles did start following his return from Viet Nam. He did see some fairly gruesome scenes. The 20 years following his discharge until this friend brought him to the VA were chaotic at best, and certainly consistent with someone suffering from PTSD. He has apparently responded to treatment over the last seven years and seems to have attained some level of clinical stability.

In conclusion, while I am not convinced of all the reported facts, there is sufficient information in the record that I would opine that [REDACTED] was in fact suffering from PTSD following his return from Viet Nam. I feel the Board should take this illness into account while considering his request.

Respectfully Submitted

[REDACTED]
CDR MC USNR/
Staff Psychiatrist