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

EGA
Docket No: 0106-15
23 March 2015

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

Subj: REVIEW NAVAL RECORD OF EX-LCPL 5 USC 522(b)(5) 5 USC 522(b)(5) USMC, 5 USC 522(b)(5)

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that the characterization of his discharge under other than honorable conditions issued on 7 September 1979, be changed.

2. The Board, consisting of 5 USC 522(b)(5) and 5 USC 522(b)(5) reviewed Petitioner's allegations of error and injustice on 23 February 2015, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty on 1 August 1974.

d. Petitioner received a formal counseling on 5 August 1976, and was warned that any further misconduct could result in an administrative separation under other than honorable conditions. Shortly thereafter, on 9 August 1976, he received nonjudicial punishment (NJP) for three days of unauthorized absence (UA).

e. On 8 September 1976, he began another period of UA and remained absent until 7 September 1979, for a total of 1,094 days. Upon surrender, he was processed for separation and received a discharged under other than honorable conditions.

f. In his application, Petitioner states that the reason for his UA was due to depression and Post-Traumatic Stress Disorder (PTSD) that developed when he returned from an overseas assignment. He submitted copies of a recent Veterans Administration medical assessment supporting his claim of being treated for PTSD.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. In this regard, based upon his record of service, to include his foreign service in a designated hostile fire area, relief in the form of his characterization of service is warranted. The Board noted that Petitioner provided a detailed medical history and PTSD diagnosis from a Veterans Affairs Medical Center. This evidence led the Board to reasonably conclude that the PTSD condition was caused by traumatic service connected events and existed at the time of his discharge. In addition, the fact that Petitioner did not engage in misconduct until after the traumatic incidents that led to his PTSD was persuasive to the Board, and led them to conclude that the PTSD was a causative factor in the misconduct that led to his discharge. Finally, after carefully considering all the evidence, the Board felt that the Petitioner's diagnosed PTSD should mitigate the misconduct he committed while on active duty since the PTSD condition outweighed the severity of the misconduct. In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 7 September 1979, he received a "general discharge" vice a discharge under other than honorable conditions.

b. That a copy of this report of proceedings be filed in Petitioner's naval record.

c. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 23 December 2014.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c) 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 USC 522(b)(5) [redacted]

T. J. REED
Recorder

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.

5 USC 522(b)(5) [redacted]

ROBERT J. O'NEILL
Executive director