



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

[REDACTED]
Docket No: 6924-16

DEC 19 2017

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USMC,
XXX-XX [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) SECDEF Memo of 3 Sep 14

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record (excerpts)
(4) BUMED Seer M34/17UM34350 letter did 30 Oct17

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 other than honorable (OTH) discharge be changed in light of current guidelines as reflected in reference (b). Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 November 2017 and, pursuant to its regulations, a majority determined that the partial 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. In addition, the Board considered the advisory opinion (AO) furnished by the Bureau of Medicine and Surgery, dated 30 October 2017, a copy of which is attached in enclosure (4).

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.

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c. Petitioner enlisted in the Marine Corps and began a period of active duty on 26 February 1968. On 7 September 1968, he began his Vietnam deployment. He participated in 13 combat operations and witnessed the deaths of fellow Marines and Vietcong; he handled the dead bodies of the fallen Marines, experienced incoming rocket attacks and had some near death experiences. The Petitioner was awarded the Purple Heart medal. During the period from 14 November 1968 to 7 July 1969, he received nonjudicial punishment (NJP) on four occasions and was convicted by summary court-martial. His offenses were unauthorized absence (UA) willfully disobeying a superior officer, failure to obey a lawful order, failure to go to his appointed place of duty, breaking restriction, willfully disobeying a lawful from a noncommissioned officer and wrongful use of marijuana.

d. On 15 September 1969, Petitioner made a written request for discharge for the good of the service to avoid trial by court-martial for two instances of failure to go to his appointed place of duty, four instances of disrespect toward a superior commissioned officer, four instances of willfully disobeying a lawful order from an commissioned officer, willfully disobeying a lawful order from a noncommissioned officer, assault and breaking restriction. Prior to submitting this request he conferred with a qualified military lawyer at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. His request was granted and the commanding officer directed his other than honorable (OTH) discharge. As a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 21 October 1969, he was discharged under OTH conditions. On 29 September 1975, he was discharged. On 26 May 2006, Petitioner was diagnosed with combat related post-traumatic stress disorder (PTSD) by the Department of Veterans Affairs (DAV).

e. Enclosure (4), an advisory opinion (AO) furnished by the Bureau of Medicine and Surgery (BUMED), which states in part that the record indicates the Petitioner experienced combat related traumatic events during his deployment to Vietnam. He had no occurrences of misconduct prior to his Vietnam deployment until after his combat experiences. Based on the preponderance of the evidence, it is the considered medical opinion that the Petitioner suffered from a mental health condition at the time of service that interfered with his judgment and led to an undesirable discharge

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The panel reviewed his application under the guidance provided in reference (b), Secretary of Defense Memorandum of 3 September 2014, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD." Specifically, the panel considered whether his application was the type that was intended to be covered by this policy.

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The purpose of the Secretary of Defense memorandum is to ease the process for veterans seeking redress and assist the Boards in reaching fair and consistent results in "these difficult cases." The memorandum describes the difficulty veterans face on "upgrading their discharges based on claims of previously unrecognized" PTSD. The memorandum further explains that since PTSD was not previously recognized as a diagnosis at the time of service for many veterans, and diagnoses were often not made until after service was completed, veterans were constrained in their arguments that PTSD should be considered in mitigation for misconduct committed or were unable to establish a nexus between PTSD and the misconduct underlying their discharge. In this regard, the Board initially notes Petitioner's misconduct and does not condone his actions. However, the Board's decision is based on Petitioner's evidence as reflected in his medical and/or mental history documentation, psychological evaluation of PTSD, and the BUMED AO. Further, the Board concluded that the PTSD was a causative factor in Petitioner's misconduct; this evidence led the Board to reasonably conclude that the PTSD condition existed at the time of his discharge, and subsequently resulted in his OTH discharge. After carefully considering all the evidence, the Board decided that Petitioner's diagnosed PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct.

The Board determined that no useful purpose is served by continuing to characterize the Petitioner's service as OTH, and recharacterization to an General," under honorable conditions characterization of service is now more appropriate. Further the Board considered the Petitioner's combat service, Purple Heart Medal, National Defense Service Medal, Vietnam Service Medal with one Star, Vietnam Campaign Medal with device, Republic of Vietnam of Gallantry with palm and Rifle Marksman Badge with device, Presidential Unit Citation, Meritorious Mast.

In view of the forgoing the Board finds the existence of an injustice warranting the following partial corrective action.

RECOMMENDATION:

That Petitioner's Marine Corps record be corrected to show that on 21 October 1969, Petitioner's characterization of service was "General," under honorable conditions, the narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF."

That Petitioner is issued a new DD Form 214 which reflects the General, under honorable conditions discharge.

That a copy of this Report of Proceedings should be filed in Petitioner's Marine Corps record.

That, upon request, the Department of Veterans Affairs is informed that Petitioner's application was received by the Board on 3 August 2016.

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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 Presented 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.

[REDACTED]

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.

[REDACTED]

Executive Director

[REDACTED]