



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

[REDACTED]
Docket No: 8189-16

NOV 13 2017

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

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

- Ref: (a) 10 U.S.C. 1552
(b) SECDEF Memo of 3 Sep 14 "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming PTSD"
(c) PDUSD Memo of 24 Feb 16 "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI"
(d) PDUSD Memo of 25 Aug 17 "Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment"

- Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Post-service PTSD diagnosis dated 22 July 2016
(4) Subject's naval record (excerpts)
(5) BUMED memo 5740 Ser M34/17UM34170 dtd 12 July 2017

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 his bad conduct (BCD) characterization of service be changed in light of current guidelines as reflected in references (b), (c), and (d). Enclosures (1) through (5) apply.

2. The Board reviewed Petitioner's allegations of error and injustice on 19 September 2017, 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, applicable statutes, regulations, policies, post-service PTSD diagnosis, and an advisory opinion (AO) provided by Navy Bureau of Medicine and Surgery (BUMED).

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

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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 on 27 June 1966. On 22 April 1969, he was convicted by general court martial (GCM) of unauthorized absence (UA) totaling 249 days. He was sentenced to confinement for one year, forfeiture of all pay and allowances, reduction to E-1, and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, on 30 September 1969, he was discharged. On 6 November 1975, he received a Presidential Pardon pursuant to Presidential Proclamation Number 4313.

d. Petitioner submitted enclosure (3), dated 22 July 2016, as evidence of a post-service diagnosis of PTSD.

e. On 13 September 2016, Petitioner requested consideration of his case based on an assertion of an undiagnosed and untreated service connected post-traumatic stress disorder (PTSD). Based on current BCNR policy and guidance, the Board requested an advisory opinion from BUMED, the office having cognizance over the subject matter, attached as enclosure (5). The advisory opinion has commented to the effect that the request has merit and warrant favorable action. See enclosure (5).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (5), the Board concludes that Petitioner's request warrants partial relief. Additionally, the Board reviewed his application under the guidance provided in references (b), (c), and (d). Specifically, the Board considered whether his application was the type that was intended to be covered by this policy.

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, based upon his record of service, to include service in Vietnam, relief in the form of his characterization of service should be changed to general.

The Board 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 post-service PTSD diagnosis, and subsequent periods of unauthorized absence as attributed to his misconduct. The Board was able to reasonably conclude that the PTSD condition existed at the time of his

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misconduct, and subsequently resulted in his other than honorable discharge. After carefully considering all the evidence, the Board felt that Petitioner's assertion of PTSD should mitigate the misconduct he committed while on active duty since this condition outweighed the severity of the misconduct. With that being determined, the Board concludes that no useful purpose is served by continuing to characterize the Petitioner's service as having been other than honorable, and recharacterization to a general discharge is now more appropriate. In view of the foregoing, the Board finds the existence of an injustice warranting the following partial corrective action.

RECOMMENDATION:

- a. That Petitioner's Naval record be corrected to show that he was issued a general discharge on 30 September 1969, vice the bad conduct discharge actually issued on that day.
 - b. That Petitioner be issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD Form 215).
 - c. That a copy of this Report of Proceedings be filed in Petitioner's Naval record.
 - d. That, upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 13 September 2016.
4. 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.

[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