



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

[REDACTED]
Docket No: 10651-16
OCT 10 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 Ser M34/17UM34184 ltr of 11Jul17

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 26 July 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, relevant portions of Petitioner's 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 11 July 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's first enlistment in the Marine Corps began on 7 August 1969, about six months after enlistment he deployed to Vietnam. While in Vietnam, he participated in Operations Pickens Forest and Imperial Lake. During these operations, he engaged in firefighting, witnessed the injury and death of fellow Marines, had bullets fly by his head and injured his back in a fall. Petitioner reenlisted on 7 February 1972, after more than two years of prior service. He served for about seven months without disciplinary incident, but during the period from 15 September 1972 to 28 February 1974, he received nonjudicial punishment (NJP) on five occasions and was convicted by summary court-martial (SCM). His offenses were absence from his appointed place of duty, unauthorized absence (UA) for three days, breaking restriction, failure to obey a lawful order, and failure to go at the prescribed time to his appointed place of duty. Petitioner was also convicted in Japanese court for possession and sale of heroin, he was awarded a year at hard labor but according to the existing records the conviction was pending appeal.

d. Subsequently, he was administratively processed for separation by reason of misconduct due to frequent involvement of a discreditable nature with military and civilian authorities. An administrative discharge board (ADB) recommended separation under other than honorable conditions by reason of misconduct and the commanding officer subsequently concurred with the ADB. On 30 June 1974, Petitioner was arrested in [REDACTED] for possession and sale of heroin. On 22 October 1974, he was convicted and sentenced to a year of forced labor imprisonment. The discharge authority approved and postponed the separation until Petitioner was released from serving his sentence in [REDACTED] prison. On 29 September 1975, he was discharged. On 22 March 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), states in part that the record indicates the Petitioner experienced combat related traumatic events during his deployment to Vietnam. He did not engage in any misconduct for his first three years of service until after his combat experiences. His job performance was consistently above standards throughout his service. The Petitioner's medical records were lost and not available for review. He claims to have used heroin as a way to cope with the emotional aftermath of his combat traumas. 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. The purpose of the Secretary of Defense

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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 a general (under honorable conditions) characterization of service is now more appropriate. Further, the Board felt that due to the severity and nature of Petitioner's conviction in Japanese Court of the sale of a controlled substance, a fully honorable characterization of service is not warranted.

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

RECOMMENDATION:

- a. That Petitioner's Marine Corps record be corrected to show that on 29 September 1975, Petitioner's characterization of service was general (under honorable conditions), the narrative reason for separation was "secretarial authority," the SPD code assigned was "JFF."
- b. That Petitioner be issued a new DD Form 214.
- c. That a copy of this Report of Proceedings should be filed in Petitioner's Marine Corps record.
- d. That, upon request, the Department of Veterans Affairs shall be informed that Petitioner's application was received by the Board on 5 December 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