



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

██████████
Docket No: 1036-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████, USN,
XXX-XX-██████████

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 654 (Repealed)
(c) USD Memo, "Correction of Military Records Following Repeal of Section 654 of Title 10, United States Code," 20 September 2011
(d) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder, 3 September 2014
(e) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI), 24 February 2016
(f) USD Memo, "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," 25 August 2017
(g) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," of 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) DD Form 214
(3) NAVPERS 601-13, Administrative Remarks, 13 Oct 64
(4) NAVPERS 601-13, Administrative Remarks, 6 Oct 67
(5) Petitioner's Statement, 11 Mar 68
(6) NAS ██████████ CO Memo, subj: Separation proceedings; information concerning, 14 Mar 1968
(7) BUPERS Memo Pers-F321-UF-cch, subj: [Petitioner] UNDESIRABLE DISCHARGE by reason of UNFITNESS – Authority for, 22 Mar 68
(8) Psychiatric Assessment Form
(9) BCNR Memo, subj: Advisory Opinion ICO [Petitioner], 15 Feb 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his characterization of service be upgraded.

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2. The Board reviewed Petitioner's allegations of error or injustice on 15 March 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include references (c) – (g).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error or 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 review Petitioner's application on its merits.

c. Petitioner reenlisted in the Navy and began a period of active duty on 1 February 1964. He had one enlistment prior to this period of active duty. See enclosure (2).

d. On 13 October 1964, Petitioner was awarded the Armed Forces Expeditionary Medal for his service in Vietnam from 8 August 1964 to 12 October 1964. See enclosure (3).

e. On 5 October 1967, Petitioner received non-judicial punishment (NJP) for dereliction of duty in violation of Article 92, Uniform Code of Military Justice (UCMJ), and for signing a false official document in violation of Article 107, UCMJ. He was reduced to the next inferior pay grade, but this punishment was suspended for six months. See enclosure (4).

f. On 11 March 1968, Petitioner submitted a written statement admitting to conduct prohibited by reference (b). See enclosure (5).

g. By memorandum dated 14 March 1968, Petitioner was notified of his pending administrative separation by reason of the conduct detailed in enclosure (5). He waived his right to counsel and to an administrative separation board, and requested an undesirable discharge for the good of the service and to escape trial by court-martial. See enclosure (6).

h. By memorandum dated 22 March 1968, the Chief of Naval Personnel directed that Petitioner be discharged for unfitness with an undesirable characterization of service. See enclosure (7).

i. On 28 March 1968, Petitioner was discharged from the Navy under other than honorable (OTH) conditions in accordance with reference (b). See enclosure (2).

j. Since Petitioner's discharge, he was diagnosed with post-traumatic stress disorder (PTSD), major depressive disorder (MDD), and alcohol use disorder. The mental health provider who diagnosed him with these conditions determined that Petitioner's psychiatric and substance abuse symptoms were correlated to his PTSD from his service in Vietnam. See enclosure (8).

k. Petitioner asserts that his discharge is unjust because he has suffered from PTSD since his second time overseas and that he was discharged because of the “drinking that goes with it.” See enclosure (1).

l. In accordance with reference (a), Petitioner’s application and records were reviewed by a qualified mental health professional who provided an advisory opinion (AO) for the Board’s consideration. The AO noted that Petitioner underwent a psychiatric evaluation on 14 March 1968 which revealed no indication of psychosis, neurosis, depression, or suicidal ideation. The AO also found that Petitioner’s in-service records contained no evidence of any mental health condition diagnosis or psychological/behavioral charges which may have indicated a mental health condition. The AO concluded that there is insufficient evidence to establish that Petitioner suffered from PTSD at the time of his military service or that his in-service misconduct could be attributed to PTSD. See enclosure (9).

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board determined that Petitioner’s characterization of service should be upgraded to fully honorable in the interests of justice.

Because Petitioner based his claim for relief in whole or in part on a diagnosed PTSD condition, the Majority reviewed Petitioner’s application in accordance with the guidance of references (d) – (f). Accordingly, the Majority applied liberal consideration to Petitioner’s claim that he developed PTSD as a result of combat operations in Vietnam, and the potential impact that this condition may have had upon his conduct. Despite applying liberal consideration to this claim, the Majority agreed with the AO conclusion that there was insufficient evidence to establish that Petitioner suffered from PTSD at the time of his military service or that his misconduct could be attributed to PTSD. Although the Majority found insufficient evidence that Petitioner’s diagnosed PTSD condition was service related or mitigated his misconduct, it did consider his diagnosed PTSD condition and the resulting symptoms as a mitigating factor under the totality of the circumstances as discussed below.

In addition to applying liberal consideration to Petitioner’s diagnosed PTSD condition in accordance with references (d) – (f), the Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (g). In this regard, the Majority considered, among other factors, Petitioner’s combat service in Vietnam; that Petitioner served for over four years in the Navy, and that most of his service was meritorious as reflected by his honorable discharge for his first enlistment and receipt of a good conduct award; that Petitioner has been diagnosed with PTSD and MDD, and that his treating mental health provider attributed these conditions to his military service, and that Petitioner apparently suffered the symptoms of PTSD untreated for many years; the circumstances of Petitioner’s discharge from the Navy; the relatively minor nature of Petitioner’s misconduct; that Petitioner would not have been separated under similar circumstances today; Petitioner’s relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner’s discharge. In considering the totality of the circumstances, the Majority found that Petitioner’s discharge and service characterization were based entirely upon reference (b).

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Although there was minor misconduct in Petitioner's record, all punishment for that misconduct was suspended and there was no evidence suggesting that this misconduct contributed to Petitioner's discharge or service characterization. Accordingly, the Majority applied the guidance of reference (c). This guidance, combined with the other mitigating factors, convinced the Majority that Petitioner's characterization of service should be upgraded to honorable in the interests of justice. Although not specifically requested by Petitioner, the Majority also determined that the interests of justice warranted changes to Petitioner's narrative reason for separation and reentry code to avoid potential negative implications.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "Honorable"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his separation code was "JFF"; and that his reentry code was "RE-1J."

That Petitioner be issued an honorable discharge certificate.

That no further corrective action should be taken.

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

MINORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Minority of the Board determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice.

The Minority also applied liberal consideration to Petitioner's claim of PTSD and the effect that it may have had upon his conduct in accordance with references (d) – (f), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (g). In general, the Minority concurred with the Majority conclusions as discussed above, and believed that Petitioner's characterization of service should be upgraded in the interests of justice under the totality of the circumstances. The Minority disagreed with the Majority, however, regarding the amount of relief warranted under the circumstances. Specifically, the Minority determined that the interests of justice warrant an upgrade only to general (under honorable conditions). In reaching this conclusion, the Minority found that the misconduct for which Petitioner received NJP partially offset the mitigating circumstances that the Majority relied upon in making its recommendation. The Minority also noted that enclosure (5) includes aggravating circumstances of the type described by reference (c) to exclude it from the general rule that discharges based on reference (b) should normally be upgraded. Based upon these considerations, the Minority determined that the interests of justice are served by upgrading Petitioner's characterization of service to general (under honorable conditions).

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MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MILPERSMAN 1910-164"; that his separation code was "JFF"; and that his reentry code was "RE-1J."

That no further corrective action should be taken.

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

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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

4/6/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Upgrade to Honorable; Secretarial Authority)

~~MINORITY Recommendation Approved (Upgrade to General (under honorable conditions); Secretarial Authority)~~

4/28/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]