



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

█  
Docket No: 2306-20

Ref: Signature Date

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

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USMC, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552  
(b) SECDEF Memo, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder," of 3 September 2014  
(c) PDUSD Memo, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI," of 24 February 2016  
(d) 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," of 25 August 2017  
(e) 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 w/attachments  
(2) DD Form 214  
(3) NAVMC 118(12), Offenses and Punishments  
(4) NAVMC 118(13), Record of Conviction by Court-Martial  
(5) NAVMC 118(13), Record of Conviction by Court-Martial  
(6) NAVMC 118(13), Record of Conviction by Court-Martial  
(7) NAVMC 118(13), Record of Conviction by Court-Martial  
(8) NDRB Decision Document, Docket No. MD-78-00915/770928  
(9) NAVPERS 3048, Request for Restoration/Clemency, 10 May 67  
(10) NAVPERS 1640/2, Classification Recommendations, 1 Jun 67  
(11) DD Form 259, Bad Conduct Discharge Certificate, 26 Jun 67  
(12) DD Form 1953, Clemency Discharge Certificate, 13 Feb 78  
(13) DD Form 215, Correction to DD Form 214, Report of Separation from Active Duty, 13 Feb 78  
(14) █ Letter, dated 3 Mar 20  
(15) BCNR Advisory Opinion, 8 Feb 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed

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enclosure (1) with the Board for Correction of Naval Records (Board) requesting that his punitive discharge be upgraded to general (under honorable conditions).

2. The Board reviewed Petitioner's allegations of error or injustice on 19 April 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 (b) – (e).

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 interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. Petitioner enlisted in the Marine Corps and began a period of active duty service on 26 February 1962. See enclosure (2).

d. On 4 May 1963, Petitioner received nonjudicial punishment (NJP) for attempting to assault a military police officer in the execution of his duties and disorderly conduct, both in violation of Article 134, Uniform Code of Military Justice (UCMJ). See enclosure (3).

e. On 9 October 1963, Petitioner was convicted by a special court-martial (SPCM), contrary to his pleas, of disrespect toward a commissioned officer in violation of Article 89, UCMJ; disobeying a lawful command in violation of Article 90, UCMJ; resisting apprehension in violation of Article 95, UCMJ; and assaulting a commissioned officer in violation of Article 128, UCMJ. His sentence included six months of confinement and a bad conduct discharge (BCD). On 21 November 1963, the convening authority approved the findings only with regard to the assault upon a commissioned officer in violation of Article 128, UCMJ.<sup>1</sup> The BCD was disapproved. See enclosure (4).

f. On 7 April 1964, Petitioner received his second NJP for an unauthorized absence of less than 24 hours in violation of Article 86, UCMJ. See enclosure (3).

g. On 17 April 1964, Petitioner received his third NJP for a short UA in violation of Article 86, UCMJ, and for being derelict in the performance of his extra duty resulting from his previous NJP in violation of Article 92, UCMJ. See enclosure (3).

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<sup>1</sup> The charges of disrespect toward a commissioned officer in violation of Article 89, UCMJ; disobeying a lawful command in violation of Article 90, UCMJ; and resisting apprehension in violation of Article 95, UCMJ, were dismissed by the convening authority.

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h. On 4 January 1965, Petitioner was convicted by a summary court-martial (SCM) for being UA from 30 November 1964 to 19 December 1964 in violation of Article 86, UCMJ. See enclosure (5).

i. On 30 November 1965, Petitioner was convicted by a SPCM of two periods of UA from 27 March 1965 to 27 May 1965 and from 27 May 1965 to 13 September 1965, in violation of Article 86, UCMJ,<sup>2</sup> and for breaking restriction in violation of Article 134, UCMJ. His sentence included six months of confinement and a BCD, but only three months of the sentence to confinement was approved by the convening authority and the execution of the approved sentence was suspended for a period of six months on 30 December 1965. See enclosure (6).

j. On 20 December 1965, Petitioner received his fourth NJP for a two-day period of UA in violation of Article 86, UCMJ. See enclosure (3).

k. On 13 January 1967, Petitioner was convicted by a SPCM for being UA from 20 May 1966 to 3 November 1966 in violation of Article 86, UCMJ. The sentence included six months of confinement and a BCD, but the convening authority did not approve the BCD. See enclosure (7).

l. On 24 January 1967, the convening authority vacated the suspension of Petitioner's BCD from his 30 November 1965 based upon the misconduct for which he was court-martialed on 13 January 1967. See enclosure (8).

m. On 6 April 1967, Petitioner was diagnosed with a personality disorder while in confinement. The evaluating psychiatrist opined that Petitioner's BCD may be appropriate due to the frequency of his misconduct, but recommended that Petitioner receive a clemency discharge due to the length of his confinements. See enclosure (8).

n. On 10 May 1967, Petitioner requested clemency from the Commandant of the Marine Corps while in confinement due to his previous SPCM conviction. Specifically, he requested that confinement credit be awarded for the time that he spent in pretrial confinement, and referenced a Red Cross message to illustrate the financial problems that he faced at home. See enclosure (9).

o. On 1 June 1967, a clemency board voted 2-1 to grant Petitioner's request for immediate release from confinement. The majority of the board members felt "that there is no point in keeping [Petitioner] any longer in confinement due to the situation as evidenced by the ... Red Cross report." The majority also found that the Marine Corps would "be better off without this liability."<sup>3</sup> See enclosure (10).

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<sup>2</sup> The break in Petitioner's UA status on 27 May 1965 occurred when he was apprehended by civilian authorities upon suspicion of burglary. His second period of UA terminated upon his apprehension by the Federal Bureau of Investigation. See enclosure (3).

<sup>3</sup> At the time of the clemency board's recommendation, Petitioner's minimum release date from confinement was 15 August 1967, while his maximum release date was 27 September 1967. Enclosure (10) notes that Petitioner received a warning for misconduct while in confinement consisting of "disobedience, trafficking, appropriation and

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p. On 26 June 1967, Petitioner's BCD was executed and he was separated from the Marine Corps. See enclosure (11).

q. On 26 January 1978, Petitioner was awarded a Presidential pardon pursuant to Presidential Proclamation 4313.<sup>4</sup> His BCD was converted to a "Clemency Discharge." See enclosure (12). A "Clemency Discharge" is considered to be neutral; it is characterized as neither honorable nor less than honorable.

r. On or about 13 February 1978, Petitioner was issued a DD Form 215 reflecting the change of his BCD to a "Clemency Discharge" in his records. See enclosure (13).

s. On 26 January 1979, the Naval Discharge Review Board (NDRB) denied Petitioner's request to upgrade his characterization of service to honorable. Petitioner asserted in his application to the NDRB that his discharge was inequitable for the following reasons: (1) his diagnosed personality disorder which should have resulted in a general discharge by reason of unsuitability; (2) his pre-service environment evidenced impairment of his ability to perform military duties; (3) his service was sufficiently meritorious to warrant a general discharge; (4) the serious personal problems that he experienced while in the Marine Corps impaired his ability to perform military duty and should have received consideration for a hardship discharge; (5) the totality of Petitioner's post-service conduct; (6) that Petitioner had been punished long enough; and (7) that Petitioner had completed the requirements for and received a Presidential pardon. The NDRB found each of these contentions to be invalid, and denied all relief. See enclosure (8).

t. Petitioner was diagnosed with post-traumatic stress order (PTSD) in 2004. According to his mental health provider, he developed PTSD prior to entering the Marine Corps due to severe mistreatment and physical abuse by his mother, and his witnessing significant domestic violence. His mental health provider further asserts that his pre-existing PTSD condition was made worse by Petitioner's multiple incarcerations while in the Marine Corps, including two in facilities he described as "red line brig" where he allegedly endured torture and mistreatment. See enclosure (14).

u. Petitioner contends that relief is warranted because he entered the Marine Corps with an undiagnosed PTSD condition, which was exacerbated by his treatment in the Marine Corps. Specifically, he asserts that he endured mental and physical torture while in confinement after his first SPCM conviction in what he described as a "red-line brig" in [REDACTED]. He claims that this treatment started the downward spiral of his career in the Marine Corps. Upon

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failure to get a haircut." This misconduct *may* have had the effect of denying Petitioner his minimum release date absent clemency.

<sup>4</sup> Under Presidential Proclamation 4313, President Ford established a program whereby Vietnam War era veterans who had been administratively classified as a deserter by reason of UA and whose absence commenced between 4 August 1964 and 28 March 1973, would be relieved of prosecution and punishment under Article 86, UCMJ, upon the taking of an oath of allegiance to the United States and the execution of an agreement with the Secretary of the Military Department concerned to fulfill a 24-month period of alternate service under the auspices of the Director of Selective Service which promotes the national health, safety, or interest.

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completion of his second incarceration, he contends that he was ridiculed and denied the opportunity to work in his MOS, which caused embarrassment and influenced him to go UA again. Finally, he claims that he was transferred to another “red-line brig” during his third incarceration, where he endured additional mental and physical torture and mistreatment. He also contends that relief is warranted because he was exposed to poisoned water while assigned to [REDACTED] for 13 months in 1964, to which he attributes his deceased child’s birth defect. Finally, Petitioner asserts that relief is warranted based upon his long post-service record of service and good behavior, and because he received a Presidential pardon for his conviction. See enclosure (1).

v. 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 found credible Petitioner’s contention that his PTSD condition was exacerbated by his harsh treatment in military confinement facilities, and noted that Petitioner provided evidence of a 2004 PTSD diagnosis based on the emotional and physical abuse and torture that he suffered in military correction facilities. The AO concluded that the preponderance of the evidence established that Petitioner suffered from PTSD at the time of his military service, and that his in-service misconduct could be attributed to his PTSD condition. See enclosure (15).

#### MAJORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Majority determined that relief is warranted in the interests of justice.

Because he based his claim for relief in whole or in part upon his PTSD condition, the Majority reviewed Petitioner’s application in accordance with the guidance of references (b) – (d). Accordingly, the Majority applied liberal consideration to Petitioner’s claim of PTSD and the effect that it may have had upon Petitioner’s misconduct. In this regard, the Majority substantially concurred with the AO conclusion that there was sufficient evidence that Petitioner suffered from PTSD during his military service, and that this condition may have mitigated some of his misconduct. The Majority harbored doubts regarding the effect of Petitioner’s multiple incarcerations upon his PTSD condition, but believed that the symptoms of Petitioner’s preexisting and untreated PTSD condition likely impacted his conduct in some ways and therefore may have mitigated some of the misconduct for which he was discharged.

In addition to applying liberal consideration to Petitioner’s mental health condition and the effect that it may have had upon his misconduct in accordance with references (b) – (d), the Majority also considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, that at least some of Petitioner’s misconduct was mitigated by his pre-existing PTSD condition, as discussed above; Petitioner’s contention that he endured mental and physical torture while confined at two separate military corrections facilities; Petitioner’s contention that more than three years of his service was honorable; that Petitioner’s PTSD condition was untreated and may have been exacerbated by his military service, and thus continued to adversely affect his life after his discharge; that Petitioner received a Presidential pardon of his conviction; Petitioner’s contention that he went UA due to his family’s financial

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situation; Petitioner's contention that he was exposed to poisoned water while assigned at [REDACTED]; Petitioner's demonstrated remorse for his conduct many years ago; that Petitioner appears to have been a productive member of society despite his discharge with no post-service criminal record and significant service within his community; Petitioner's relative youth and immaturity at the time of his misconduct; and the significant passage of time since Petitioner's discharge. Based upon this review, the Majority determined that moderate clemency is warranted given the totality of the circumstances. Specifically, the Majority found that Petitioner's misconduct, while significant, was slightly outweighed by the numerous mitigating factors that have accumulated since his discharge. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice.

Although not specifically requested by Petitioner, the Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable, but determined that such extraordinary clemency is not warranted under the totality of the circumstances. As noted above, the Majority found that the significant mitigating factors only slightly outweighed the nature and frequency of Petitioner's serious misconduct; they did not outweigh Petitioner's misconduct so significantly to warrant an honorable discharge. The Majority also found that Petitioner has already received significant clemency from various sources over the years, both during his service and after his discharge, which offset the mitigating factors that weighed in favor of further clemency.

In addition to determining that Petitioner's characterization of service should be upgraded to general (under honorable conditions), the Majority also found that Petitioner's narrative reason for separation should be changed to minimize potential future negative implications from Petitioner's naval record.

#### MAJORITY RECOMMENDATION:

In view of the above, the Majority recommends that the following corrective actions be taken on Petitioner's naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as "General (under honorable condition)"; that the narrative reason for his separation was "Directed by the Secretary of the Navy"; and that his separation authority was "Paragraph 13268 Marine Corps Personnel Manual."

That no further action be taken on Petitioner's naval record.

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

#### MINORITY CONCLUSION:

After careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice to warrant relief.

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The Minority also applied liberal consideration to Petitioner's PTSD condition in accordance with references (b) – (d), and considered the totality of the circumstances to determine whether clemency is warranted in the interests of justice in accordance with reference (e). In this regard, the Minority agreed with the Majority conclusions regarding Petitioner's mental health condition and the moderate mitigating effect that it may have had upon his misconduct. Even applying liberal consideration to Petitioner's mental health condition, however, the Minority found that Petitioner's serious and frequency misconduct far outweighed all of the mitigating factors combined. Additionally, the Minority believed that Petitioner has already benefitted from significant clemency both during and after his service, to include reduced sentences from various convening authorities during his service, the early termination of his confinement before his BCD, and pursuant to Presidential Proclamation 4313 which has spared Petitioner the stigma of the BCD that his misconduct warranted. As such, the Minority found that no more clemency is warranted under the totality of the circumstances.

MINORITY RECOMMENDATION:

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

4. It is certified that 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.

5/12/2021

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Full Relief – Upgrade to General (under honorable conditions; Change to Secretarial Authority)

MINORITY Recommendation Approved (Deny Relief)

~~Other (Upgrade to Honorable; Change to Secretarial Authority)~~

6/15/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]