



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

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Docket No: 7972-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER MEMBER █
XXX XX █ USMC

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 PTSD," 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) PDUSD 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) USECDEF 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) Case summary
(3) Official Military Personnel File (excerpts)

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 his discharge characterization be upgraded to honorable or general, under honorable conditions. Additionally, Petitioner requests the rank he obtained prior to discharge be restored and his Certificate of Release or Discharge from Active Duty (DD Form 214) be corrected to reflect all awards earned during his service in Vietnam.

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 16 July 2021 and, pursuant to its regulations, determined the corrective action indicated below should be taken. Documentary material considered by the Board consisted of Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of

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Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) of a qualified mental health provider.

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 review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 30 January 1963.

d. On 12 February 1964, Petitioner received nonjudicial punishment (NJP) for failure to pay his taxi fare. On 29 December 1964, he received a second NJP for disrespect toward military police and nuisance committing. On 17 March 1965, Petitioner received a third NJP for an unauthorized absence of less than six hours.

e. Petitioner participated in numerous combat operations in Vietnam between 7 August 1964 and when he was wounded in action on 22 November 1965. He was awarded the Purple Heart Medal on 4 January 1966.

f. On 1 September 1966, Petitioner was involved in an altercation which ended in the death of an individual who tried to attack Petitioner and another Marine. On 25 February 1967, he was convicted by general court-martial (GCM) of murder by means of stabbing with a knife and sentenced to a bad conduct discharge (BCD), forfeiture, confinement, and reduction in rank. The BCD was subsequently approved at all levels of appellate review, and on 11 March 1969, Petitioner was discharged.

g. Petitioner's DD Form 214 reflects he was awarded the following awards during his military service: Armed Forces Expeditionary Medal, National Defense Service Medal, Navy Unit Commendation Medal, and Republic of Vietnam Campaign Medal with device. The DD Form 214 does not reflect the Purple Heart Medal awarded on 4 January 1966.

h. Petitioner contends he suffered from undiagnosed PTSD at the time of the altercation that led to his GCM and BCD. He explains that the aggressor attacked and stabbed him, there was a struggle and a chase, and "during the struggle I killed the aggressor." In support of his contention, Petitioner submitted an excerpt from a paper which discussed the effects of PTSD and his ordeal and experiences in Vietnam. Additionally, Petitioner submitted five advocacy letters from fellow Marines.

i. As part of the Board's review, a qualified mental health provider reviewed Petitioner's assertions and available records and provided an AO on 30 May 2021. The AO stated Petitioner's deployment and post-deployment misconduct could be attributable to early

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symptoms of PTSD. The AO further stated Petitioner's account of experiencing flashbacks to Vietnam combat trauma when he was attacked by the aggressor and injured by the knife would also be consistent with PTSD. The AO concluded the evidence supports Petitioner's contention of undiagnosed PTSD incurred as a result of combat trauma, compounded by combat injuries, and his misconduct may be mitigated by his PTSD.

j. The GCM and appellate review documentation contains facts of the case which reveal the aggressor fled the scene after he initially engaged with Petitioner and another Marine but Petitioner pursued him.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes Petitioner's request warrants partial relief. The Board reviewed his application under the guidance provided in references (b) through (e).

The Board, noting the facts of the case and specifically the undisputed testimony that Petitioner pursued the victim, concluded Petitioner's actions should not be mitigated by his PTSD. Even applying liberal consideration and considering the AO's explanation that flashbacks would be consistent with PTSD, the Board determined there was insufficient evidence of an error or injustice in the GCM conviction, sentence awarded by the GCM, or appellate review process.

However, the Board determined Petitioner is entitled to wear the Purple Heart Medal which is not listed on his DD Form 214.

RECOMMENDATION:

In view of the above, the Board directs the following corrective action:

MMMA-3A is directed to review Petitioner's record to ensure all awards earned during his military service are reflected on his DD Form 214, to include the Purple Heart Medal.

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 entitled matter.

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

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

8/6/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]