



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

██████████
Docket No: 8699-20
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER ██████████,
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 PTSD," 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," 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," 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," 25 July 2018

Encl: (1) DD Form 149 with attachments
(2) The People of the State of ██████████ v. [Petitioner], Municipal Court of ██████████ Judicial District, Probation Officer's Report (Diversion Report)
(3) DD Form 214
(4) NAVMC 118/9, Combat History-Expeditions-Awards Record
(5) Defense Investigative Service Form 118-72, Report, 13 Aug 90
(6) ██████████ Division Special Court-Martial Order and Action Number 72-03, 28 Feb 92
(7) NAVDRUGLAB San Diego Msg, subj: Report of Urine Sample Tests [illegible] Report 5850-41, 27 Feb 92
(8) DD Form 458, Charge Sheet, 23 Mar 92
(9) Petitioner's Memo, subj: Request for Separation in Lieu of Trial by Court-Martial in the case of [Petitioner], (undated)
(10) ██████████ Division CG Memo, subj: Request for Separation in Lieu of Trial by Court-Martial in the case of [Petitioner], 10 Jun 1982
(11) NDRB Decisional Document, Docket No. MD97-00607, 9 Jul 97
(12) Department of Veterans Affairs Greater ██████████ Healthcare System Letter, re: [Petitioner], dtd 10 Aug 20
(13) BCNR Advisory Opinion, 7 May 21

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

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.
2. The Board reviewed Petitioner's allegations of error or injustice on 28 July 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 of 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. Prior to enlisting in the Marine Corps, Petitioner was arrested for possession of cocaine on 4 February 1988. On 7 April 1988, Petitioner was accepted into the diversion program for first time offenders. As of October 1988, Petitioner was determined to be out of compliance with the requirements of his diversion program, and could not be located by his Probation Officer. See enclosure (2).
 - c. Petitioner enlisted in the Marine Corps and began a period of active duty on 24 September 1989. See enclosure (3).
 - d. Petitioner participated in Operation Desert Storm in [REDACTED] from 20 January 1991 to 6 April 1991 and was awarded the Combat Action Ribbon. See enclosure (4).
 - e. On 21 January 1991, a Defense Investigative Service background check revealed that Petitioner failed to disclose two pre-service arrests for unlawful possession of a controlled substances, to include the offense for which he was enrolled in the diversion program. See enclosure (5).
 - f. On 3 January 1992, Petitioner was convicted by special court-martial (SPCM), pursuant to his plea, of a 77-day unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ). His sentence included 30 days of confinement, but did not include a punitive discharge. See enclosure (6).
 - g. By message dated 27 February 1992, the Naval Drug Laboratory notified Petitioner's command that he had tested positive for cocaine use. See enclosure (7).
 - h. On 23 March 1992, Petitioner was charged with wrongfully using cocaine, in violation of Article 112a, UCMJ. See enclosure (8).

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

i. Petitioner subsequently requested separation in lieu of trial by court-martial (SILT). In a hand-written letter to the convening authority accompanying this request, Petitioner explained that he went UA to help his father after the murder of his uncle. See enclosure (9).

j. By memorandum dated 10 June 1992, the separation authority approved Petitioner's SILT request, and directed that he be discharged under other than honorable (OTH) conditions. See enclosure (10).

k. On 1 July 1992, Petitioner was discharged under OTH conditions pursuant to his SILT request. See enclosure (3).

l. On 6 July 1997, the Naval Discharge Review Board (NDRB) discerned no impropriety or inequity in Petitioner's discharge, and unanimously determined that no change should be made to Petitioner's characterization of service. See enclosure (11).

m. By letter dated 10 August 2020, Petitioner's mental health provider reported that Petitioner suffers from chronic and severe post-traumatic stress disorder (PTSD) symptoms, to include nightmares, intrusive memories, hypervigilance, avoidance, anxiety, and irritability. He opined that "it is at least as likely as not that the ongoing symptoms are due to the traumatic experience [Petitioner endured] while in military service."¹ See enclosure (12).

n. Petitioner contends that relief is warranted because he received a CAR for participation in the Operation Desert Storm and did not realize until many years later that he was suffering from the effects of PTSD after his return from deployment. He contends that something changed in him after his exposure to combat; he did not know he should have sought help, nor how to find it, until many years later. See enclosure (1).

o. 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 Petitioner's preservice drug charges, and commented that it is not uncommon for trauma symptoms to have a delayed onset or for those who experience such symptoms to resort to previous maladaptive coping mechanism (i.e., drug use). The AO concluded that the available objective evidence indicated that Petitioner exhibited behaviors associated with PTSD during his military service and that some, but not all, of his misconduct may be mitigated by his PTSD. See enclosure (13).

MAJORITY CONCLUSION:

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

Because Petitioner based his claim for relief in part upon his PTSD condition, his application was reviewed in accordance with references (b) – (d). Accordingly, the Majority applied liberal

¹ This letter references Petitioner's extensive exposure to combat when deployed, and explained that Petitioner witnessed many deaths and severe burns on the first day of his convoy. Later, Petitioner was reportedly under frequent threat and enemy attack, and witnessed casualties from both enemy attacks and friendly fire.

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

consideration to Petitioner's PTSD condition and the effect that it may have had upon his misconduct. In this regard, the Majority substantially concurred with the AO finding that some, but not all of Petitioner's misconduct may be mitigated by his PTSD symptoms. Specifically, the Majority found it likely that Petitioner's cocaine use was a maladaptive coping mechanism to deal with his untreated PTSD symptoms. However, the Majority found it to be unlikely that Petitioner's UA was related to his PTSD condition, as Petitioner provided a viable alternative explanation at the time of this misconduct.

In addition to applying liberal consideration to Petitioner's PTSD condition and the effect that it may have upon his misconduct in accordance with references (b) – (d), the Majority also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). In this regard, the Majority considered, among other factors, the mitigating effect of Petitioner's PTSD symptoms upon some of the misconduct for which he was discharged, as discussed above; Petitioner's combat service in Operation Desert Storm; that Petitioner developed PTSD as a result of his service in the Marine Corps, and has suffered its effects for many years; Petitioner's contention that he went UA to assist his father in the aftermath of his uncle's murder; the nonviolent and relatively minor nature of Petitioner's misconduct; Petitioner's relative youth and immaturity at the time of his misconduct; and the passage of time since Petitioner's discharge. Based upon the totality of the circumstances, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions) in the interests of justice. In making this determination, the Majority found that the mitigating circumstances outweighed the misconduct for which Petitioner was discharged, but not so significantly as to warrant an upgrade of his characterization of service to fully honorable.

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 "General (under honorable conditions)."

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

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

MINORITY CONCLUSION:

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

The Minority also applied liberal consideration to Petitioner's PTSD condition and the effect that it may have had upon his misconduct in accordance with references (b) – (d), and considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (e). The Minority did not doubt Petitioner's PTSD condition, but

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

noted that his mental health provider stated only that it was “at least as likely as not” that Petitioner’s PTSD symptoms were the result of his Marine Corps service. Further, the Minority believed that Petitioner’s drug use was at least as likely as not a relapse of Petitioner’s preservice drug habit than a maladaptive coping mechanism for the symptoms of PTSD, especially since Petitioner failed to reveal his pre-service arrests and apparently failed to complete the requirements of one of his diversion programs. Finally, the Minority noted that Petitioner was spared a punitive discharge by his SPCM for misconduct which it found was not attributable to his PTSD condition, only to subsequently engage in more significant misconduct, suggesting a lack of rehabilitation potential. As such, the Minority did not believe that the mitigating circumstances appreciably outweighed the misconduct for which Petitioner was separated, and that his OTH characterization of service was, and remains, appropriate 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 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.

8/25/2021

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Partial Relief – Upgrade to General (under honorable conditions))

MINORITY Recommendation Approved (Deny Relief)

OTHER RELIEF (Upgrade to Honorable)

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]