



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

■
Docket No: 1530-21

Ref: Signature Date

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

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

- 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 w/attachments
 - (2) DD Form 214
 - (3) Standard Form 602, Clinical Record – Narrative Summary, 8 March 1978
 - (4) NAVMC 118(12), Offenses and Punishments
 - (5) ■ [REDACTED] ■ [REDACTED] CO Memo 1/JPC/RWN, subj: Notification of recommendation for administrative discharge by reason of misconduct, 20 June 1981
 - (6) Petitioner's Memo 1/JPC/RWN, subj: Acknowledgement of Advice to Respondent and Receipt of Correspondence, 20 June 1981
 - (7) ■ [REDACTED] ■ [REDACTED] CO Memo 1/JPC/RWN, subj: Recommendation for administrative discharge by reason of misconduct; case of [Petitioner], 20 June 1981
 - (8) NDRB Decisional Document, Docket Number MD93-01131, 3 September 1993
 - (9) DD Form 214 (19770201-19810715)
 - (10) BCNR Letter, Docket No. 08640-12, 5 June 2013
 - (11) Department of Veterans Affairs Rating Decision, 14 November 2013
 - (12) BCNR Letter, Docket No. 0151-15, 24 June 2016
 - (13) BCNR Advisory Opinion, 20 July 2021

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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 regulation 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 1 February 1973. He completed his first four year enlistment honorably. See enclosure (2).
 - d. On 28 January 1978, Petitioner was involved in an altercation which resulted in trauma to his head and face with loss of consciousness. He was admitted to the hospital with a fractured skull and mandible, and multiple facial injuries, requiring surgery and extended observation. See enclosure (3).
 - e. On 8 November 1979, Petitioner received non-judicial punishment (NJP) for disobeying and disrespecting a superior noncommissioned officer in violation of Article 91, Uniform Code of Military Justice (UCMJ). See enclosure (4).
 - f. On 7 December 1979, Petitioner received his second NJP for unauthorized absence (UA) in violation of Article 86, UCMJ; and dereliction of duty by sleeping in his vehicle while on duty in violation of Article 92, UCMJ. See enclosure (4).
 - g. On 5 January 1981, Petitioner received his third NJP for disobeying a superior noncommissioned officer in violation of Article 91, UCMJ. See enclosure (4).
 - h. On 19 January 1981, Petitioner received his fourth NJP for two specifications of assault in violation of Article 128, UCMJ. See enclosure (4).
 - i. By memorandum dated 20 June 1981, Petitioner was notified that he was being recommended for administrative discharge from the Marine Corps by reason of misconduct due to his "frequent involvement (of a discreditable nature) with military authority." See enclosure (5).

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j. By memorandum dated 20 June 1981, Petitioner waived his right to consult with counsel and to have his case heard by an administrative separation board. See enclosure (6).

k. By memorandum dated 20 June 1981, Petitioner's commander recommended to the separation authority that Petitioner be discharged from the Marine Corps under other than honorable (OTH) conditions for misconduct. See enclosure (7).

l. On 1 July 1981, the separation authority directed that Petitioner be discharged from the Marine Corps under OTH conditions for misconduct. See enclosure (8).

m. On 15 July 1981, Petitioner was discharged from the Marine Corps under OTH conditions for misconduct due to "[f]requent [i]nvolvement [of a discreditable nature with military authorities]." See enclosure (9).

n. On 1 September 1993, the Naval Discharge Review Board (NDRB) discerned no impropriety or inequity in Petitioner's discharge and determined that it should remain unchanged.¹ See enclosure (8).

o. On 4 June 2013, the Board found insufficient evidence to establish the existence of probable material error or injustice in Petitioner's discharge in Docket No. 8640-12, and therefore denied his request for relief. See enclosure (10).

p. On 14 November 2013, the Department of Veterans Affairs (VA) denied Petitioner service connection for an acquired psychiatric condition, to include stress; depression (claimed as stress); anxiety disorder (claimed as stress); migraine headaches; and traumatic brain injury (claimed as head trauma). The VA noted the head injury in Petitioner's records from January 1978, as discussed in paragraph 3d above, but denied service connection for this injury because it occurred during a period of Petitioner's service determined to be dishonorable for VA purposes. See enclosure (11).

q. On 11 February 2016, the Board reconsidered its decision from Docket No. 8640-12 in Docket No. 0151-15, and again found insufficient evidence to establish the existence of probable material error or injustice. Petitioner had asserted error in that he had appealed one of his NJPs, and injustice in that he was racially discriminated against. See enclosure (12).

r. Petitioner contends that he was unconscious for 28 days after the altercation in January 1978, and that no one asked him what happened after he regained consciousness. He contends that he was suffering from undiagnosed post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) at the time of his misconduct. Specifically, he asserts that his head trauma made him feel on edge all of the time, and that he would snap at people for no reason and could no longer trust anyone. He also contends that one of his supervisors used a racial slur against him, which further alienated his trust. See enclosure (1).

¹ Petitioner introduced no decisional issues for consideration by the NDRB.

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s. 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's in-service medical records substantiated that Petitioner suffered a head injury in January 1978, and that he exhibited a marked change in his performance and conduct subsequent to this injury. It also noted that the symptoms described by Petitioner were indicative of likely TBI and early PTSD. The AO concluded that the preponderance of indirect evidence indicated that Petitioner exhibited behaviors associated with PTSD and TBI following an assault during his military service, and that his in-service misconduct could be attributed to his TBI and PTSD condition. See enclosure (13).

MAJORITY CONCLUSION

Upon careful review and consideration of all of the evidence of record, the Majority of the Board determined that Petitioner's application warrants relief in the interests of justice.

Because he based his claim for relief in whole or in part upon his TBI and 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 TBI and PTSD conditions, and the effect that they have had upon his misconduct. In this regard, the Majority substantially agreed with the AO findings that Petitioner suffered from TBI and PTSD during his service, and that these conditions mitigated the misconduct for which he was discharged. In particular, the Board noted the marked change in Petitioner's performance and conduct after the assault that resulted in his head injury. Whereas Petitioner's performance and conduct was meritorious prior to this event, it was characterized by repeated acts of misconduct associated with these conditions after the event. Accordingly, the Majority found that Petitioner's TBI and PTSD conditions mitigated the misconduct for which Petitioner was discharged.

In addition to applying liberal consideration to Petitioner's TBI and PTSD conditions and the effects that they may have had 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 Board considered, among other factors, the mitigating effect of Petitioner's TBI and PTSD conditions upon the misconduct for which he was discharged, as discussed above; that Petitioner was assaulted and rendered unconscious by one of his fellow Marines, resulting in significant injuries; that Petitioner completed his first enlistment honorably, and only began to demonstrate his pattern of misconduct after his traumatic head injury; that Petitioner continued to suffer the effects of his undiagnosed TBI and PTSD conditions long after he was discharged; Petitioner's contention that he endured racial slurs from one of his supervisors; the relatively minor nature of the misconduct for which Petitioner was discharged; 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 the mitigating circumstances outweighed the misconduct for which Petitioner was discharged. Accordingly, the Majority determined that Petitioner's characterization of service should be upgraded to general (under honorable conditions). The Majority considered whether Petitioner's characterization of service should be upgraded to fully honorable, but determined that, given the nature and quantity of

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Petitioner's misconduct, that the mitigating circumstances did not so significantly outweigh his misconduct to warrant such extraordinary relief.

Although not specifically requested, the Majority also determined that Petitioner's narrative reason for separation and the associated entries on his DD Form 214 should be changed in the interests of justice to minimize the potential for negative inferences being drawn from his service in the future.

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 in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service from 1 February 1977 to 15 July 1981 was characterized as "General (under honorable conditions)"; that the narrative reason for his separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN 6207.2"; that his separation code was "JFF"; and that his reenlistment code was "RE-1J."

That a copy of this record 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 also determined that relief is warranted in the interests of justice.

The Minority also applied liberal consideration to Petitioner's claimed TBI and PTSD conditions and the effects that they 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 interest of justice in accordance with reference (e). In this regard, the Minority agreed with the Majority that there is sufficient evidence that Petitioner suffered from TBI and PTSD during his service in the Marine Corps, and that these conditions may have mitigated the misconduct for which Petitioner was discharged. The Minority disagreed with the Majority, however, in that it found the mitigating circumstances to so significantly outweigh Petitioner's relatively minor misconduct as to warrant an upgrade of his characterization of service to fully honorable. Specifically, the Minority found the change in Petitioner's conduct and performance after his head injury to be so pronounced that his TBI and PTSD conditions essentially excused Petitioner's misconduct. Accordingly, the Minority determined that Petitioner's characterization of service should be upgraded to fully honorable in the interests of justice.

The Minority agreed with the Majority determination that Petitioner's narrative reason for separation and associated entries in his DD Form 214 should also be changed in the interests of justice.

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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 in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service from 1 February 1977 to 15 July 1981 was characterized as "Honorable"; that his narrative reason for separation was "Secretarial Authority"; that his separation authority was "MARCORSEPMAN 6207.2"; that his separation code was "JFF"; and that his reenlistment code was "RE-1J."

That Petitioner be issued an Honorable Discharge certificate.

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

That no further 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.

8/28/2021

[REDACTED]

Executive Director

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

~~MAJORITY Recommendation Approved (Upgrade to General (under honorable conditions); Change Narrative Reason for Separation and Associated Entries in DD Form 214 to Reflect “Secretarial Authority”)~~

MINORITY Recommendation Approved (Upgrade to Honorable; Change Narrative Reason for Separation and Associated Entries in DD Form 214 to Reflect “Secretarial Authority”)

~~Board Recommendation Disapproved (Deny Relief — The mitigating circumstances do not outweigh the misconduct for which Petitioner was discharged, so relief is not warranted in the interests of justice.)~~

10/31/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]